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EDEN VERSUS WHISTLER

THE BARONET & THE BUTTERFLY

A VALENTINE WITH A VERDICT

PARIS

To Charles L Freer Esq Aug 1 1899

Carlton Hotel

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PALL MALL,
LONDON.

The Baronet and the Butterfly

By James McNeil Whistler

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A violet Noël - Spring -

To Charles L. Freer — a determined friend.

with affection.

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N° 116

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A VALENTINE WITH
A VERDICT

PARIS
LOUIS-HENRY MAY
11, *rue St-Benoît*

Law book
927
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"*Noblesse Abuse!*"

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BEING

A MOST RARE AND FASCINATING HISTORY, FROM THE PALACE OF THE COURTS, WHEREIN IS SHOWN, WITH MUCH WIT AND CIRCUMSTANCE, HOW THE GENTLE MASTER, UNSUSPECTING, WAS SIGHTED, TRACKED, WAYLAID, CIRCUMVENTED, AND RUN TO EARTH BY COMMERCIAL KNIGHT OF UNTIRING INDUSTRY!

TOGETHER WITH THE AMUSING INTRODUCTION OF THE HIND, HENCHMAN, EXPERT AND GO-BETWEEN.

AND, FURTHER ON, SETTING FORTH THE METHODS, DEVICES, CAJOLERIES EMPLOYED FOR THE ENSNARING, ENTRAPPING, BEWILDERING, AND FINAL

CONFUSION OF THE ALL-CONFIDING SWEET AND SIMPLE PAINTER.

CULMINATING IN THE ABRUPT, INGENIOUS, AND STUPENDOUS INVENTION OF THE "VALENTINE!"— TOGETHER WITH ITS APPLICATION, AND MANNER OF USE.

AND, IN THE RECOUNTING OF SUCH EXCELLENT MATTER, IS AGAIN CURIOUSLY BROUGHT TO LIGHT THE CONTINUED FALLACY, DANGER, IMMODESTY, IMMORALITY, AND MONSTROUS INCONVENIENCE OF SHAMELESS FRIENDSHIP!

To

Those Confrères across the Channel who, refraining from intrusive demonstration, with a pluck and delicacy all their own, "sat tight" during the struggle, these decrees of the Judges are affectionately dedicated

Paris

ARGUMENT

SENT TO THE STOCKS, BY BELTED BRITON, THAT HE MAY THERE BE PELTED WITH UNCLEAN EGG BY THE PHILISTINE OF THE MARKET, IN HIS UPRIGHT WRATH, AND BEHOLD!—THIS IS THE MAN WHOM THE NATION DELIGHTETH TO HONOUR!

AND YET HE HATH DONE THESE THINGS, THIS MOCKER OF BARONETS!

AND THEY COME OUT TO MEET HIM, WITH HERALDS AND BANNERS, AND TRUMPETERS, FROM FAIR FRANCE!

AND THE LAW OF THE LAND IS ALTERED—AND NEW STATUTES ARE MADE IN HIS HONOUR!

AND HAMAN THE ISLANDER IS SHAMED BEFORE THE PEOPLE—AND IS HANGED, AS AN OFFERING TO

THE DISTINGUISHED ONE!—TO APPEASE HIM, AND FOR HIS HEART'S PLEASURE.

AND THERE IS GREAT REJOICING! AND IT IS COMMANDED THAT A RECORD OF THESE THINGS BE KEPT IN THE CHRONICLES OF THE COURT.

AND IT IS GRAVEN UPON THE TABLETS OF THE CAUSES CÉLÈBRES—AND THE NEW LAW IS ADDED TO THE CODE NAPOLÉON!

AND THE NAME THEREOF IS FAMOUS FOREVER!

Fog

MR WHISTLER has really surpassed himself in the gentle art of making enemies. That Sir William Eden should have considered £100 adequate payment for a portrait of his wife was beyond doubt provocative. But where Mr. Whistler seems to have shown rather less than his usual tact was in both keeping Sir William's "valentine" and declining to surrender his picture—indeed, not only declining to surrender, but availing himself of the right of a "considerable artist" to "efface the head and preserve the general arrangement, in which he intended to place another head." The questions which the Court will have to decide are numerous and rather obscure, *e.g.*:

Westminster Gazette, Feb. 28, 1895.

1. In accepting the "valentine" of £100, was Mr. Whistler entitled to regard this as a kind of "charitable contract" from which he might legiti-

mately consider himself released by Sir William's conduct?

2. In pursuance of the "charitable contract" or in its failure, is he entitled to keep the picture?

3. If so, is he entitled to efface Lady Eden's head and to preserve the remainder of the "general arrangement" as a vehicle for someone else's head?

4. What ought to be done with the "valentine"?

A Ray:

Pall Mall Gazette.

When the painting was demanded *in return for the Valentine* (!), the sum was sent back to this practising "Patron"—and the picture wiped out!

The Baronet will not have his money—as the 'bus man would not take again his own bad shilling—he is going in for bigger stakes—

10,000 FRANCS!

Official—Extract

"FRENCH Republic. In the name of the French People. The President of the Civil Tribunal of 1st Instance of the Department of the Seine, sitting at the Palace of Justice at Paris, has pronounced, in public audience, the interlocutory order whereof the tenour follows: In the year 1894, on the 4th December, Before us, President of the Civil Tribunal of the Seine, sitting for interlocutory applications, in the ordinary chamber for interlocutory applications, assisted by our Registrar, at one o'clock in the afternoon, has appeared Me Marmottant, Solicitor of the Tribunal and for Sir William Eden, residing at Windlestone, Ferry Hill, County of Durham (England). Who has stated to us that, at the request of the said Sir William Eden, by writ of Baudin, Process Server, dated Paris the 24th November, 1894, registered, he has caused a summons

to be served on Mr. J. MacNeill Whistler, artist and painter, residing at 110 Rue du Bac, Paris, to appear before us on this day, at this place, and at this hour, for the following purpose: Whereas the said Sir William Eden *had ordered* of the said Mr. Whistler a portrait of Lady Eden, his wife, *at the price of one hundred and five pounds sterling*, or in French money the sum of 2625 francs, which *had been paid in advance. . . .*"

Indiscretions

A CORRESPONDENT of the Herald called yesterday on Sir William Eden, and received the following statement:

New York Herald, Paris, March 2, 1895.

"Last winter, when I was in Paris, I spoke to Mr. George Moore, the art critic, and said I would like to have a sketch made and would pay about 100 guineas for the same.

"The picture was completed, and I sent 100 guineas, supposing that was all that was required—the portrait, in size, *was only about as large as a sheet of note paper.*

"The receipt of the cheque was acknowledged and the same cashed. There was nothing said about demanding more money. As I sent the cheque on St. Valentine's Day I called it, jocularly, a valentine, and in acknowledging its receipt Mr. Whistler made use of the same word.

"On my return from India I learned that the picture had been exhibited and not delivered. I asked for delivery and was refused."

Mr. Moore, who was present during the interview, stated that, in his opinion as an art expert, the picture was very well paid for at 100 guineas.

Sir William expressed his surprise at the way in which he had been treated, *and is very clear that no fixed price was arranged for in any of the negotiations* other than the general estimate of 100 guineas to a maximum of 150 guineas. He states further that he offered to pay more when he saw Mr. Whistler was discontented, but was told that the offer would not be entertained.

The Baronet's Indiscretions

To the Editor of the *Pall Mall Gazette.*

SIR,—You will have seen, in the papers, that the Baronet has brought out his basket, and that the scavenging interviewer has not left him a rag !— *Pall Mall Gazette,* March 6.

It is curious, and, in an unchristian way, pleasant, to note how a thrifty Mæcenas, who, through life, surely never gave away anything, now, at the sweet singing of the insinuating Secretary bird, unreservedly and ungrudgingly, gives away . . . himself !—

Mr. Moore also "was present"—and of course was tossed in with the linen. In the warmth of the moment, I notice that his patron palmed him off as an "expert" (*sic*). Expert Moore !

Expert Moore, then, was made to lift up his voice and curse the work of the one, in praising whom, for years past, he has sold reams of copy, and made for

himself a spurious reputation as advanced connoisseur and cultured critic.

Between them, these two profound conspirators establish *the worthlessness of the picture*—to obtain possession of which the ardent sportsman has come into Court—or, for the loss of which, *he is asking ten thousand francs!*

In his plaint, this honest gentleman swears that the picture was "paid for in advance," but don't you believe it; he now says to the irresistible taker of notes, "the picture *was completed*, and I *sent* the 100 guineas!" Doubly careless; for, as a silly matter of fact, at the moment of perpetrating his "confidence trick," this Bunko Baronet *handed* me the mysterious envelope, *à brule pourpoint*, in the studio, begging me not to open it until I should have reached my own house, and he was safely on his way to South Africa.

In the Court again, our "Sir Eden," as they delight in calling him here, declares that the portrait was "*commissioned* at one hundred guineas," and here, in his confession—tardy, but complete—he is very clear that *no fixed price was arranged for*, in any of the negotiations, other than the general estimate of 100 to a maximum of 150 guineas. Awkward this!

And there is more of it—sad, it seems to me in its shifty forgetfulness and inability boldly to do evil.

Also it would go to show that a few ancestors seizing upon odd droves of oxen, as set forth in Burke, is but poor backing for a modern Baronet in his clumsy commercial struggles.

For the great Napoleon was perhaps partly right! "Grattez le Barronet, et vous trouvez—(quelquefois) le Boutiquier"!

A Champion

To the Editor of the *Pall Mall Gazette*.

SIR,—I have just read a letter in this evening's *Pall Mall* from J. McNeill Whistler commenting upon the action which Sir William Eden very rightly brought against him. For vulgarity, insolence, and cowardice combined, the composition would be hard to beat, and the most appropriate answer to it would be the *argumentum baculinum*, which Mr. Whistler knows is out of date, or he would not have dared to write it. In a cloud of abuse, worthy of O'Connell's old apple-woman, without a shred of argument, he attempts to obscure a very simple issue.

Pall Mall Gazette, March 8, 1895.

Mr. Whistler agreed to paint a small picture of Lady Eden for a sum of money arranged between him and Mr. Moore. The picture was painted and the money paid, but instead of completing the trans-

action by delivery of the portrait, which any gentleman would have done, this "considerable artist!" defaces the picture, and invents a code of morality for himself, which, if carefully followed up, will some day provide him with lodgings at the public expense. If Mr. Whistler had happened to be a tailor, and a customer had ordered a pair of trousers from him and paid for them in advance, he (the customer) would have expected those trousers to have been sent to him in due course. But if, after repeated applications, the breeks failed to appear because Mr. Whistler had cut a large hole in them, he would have obtained money under false pretences, and the consequences would have been unpleasant to him. Where is the difference? Mr. Whistler the considerable artist, and Mr. Whistler the tailor, are both tradesmen, and what is sauce for the tailor's goose is sauce for the artist's gander.

Yours, &c.,

FRED. MORTON EDEN.

63 WARWICK ROAD, EARL'S COURT.

Encountered

To the Editor of the *Pall Mall Gazette.*

SIR,—We know the Baronet's Valentine—you present to us now, *comme de juste*, I suppose, the Orson of the Clan.

Pall Mall Gazette, March 11, 1895.

See how he roars!—far from the farmer's wife, and her carving knife—adown the road of Warwick!

As an authority, in theory, on courtesy and the gentle arts, Orson is new—but in practice, I fancy we still recognize him of the club, as of old.

About tailors he may be right. The very clear-headed Sir William would know of course—and, from the determined attitude toward them, taken by this fresh and sturdy member of that pleasant family, it is clear that the poor devil North country snip has but slender chance with the Baronial breeches. Also, I now understand the course pursued with me. Indeed,

it is well known, among my distinguished confrères that I am not the only painter upon whom our summary Patron has practised the swift and minute methods, unerring with his tailor.

Surely his courageous sentiment is now famous: "I know," he said, as he stood in front of the easel, "I know that I have there a beautiful little picture, but that is my luck! and a man is a d——d fool who gives a larger price for a thing that he can have for a smaller one!"

This to me, in my own studio, on the occasion of his visit, the day after the Valentine, when, pale and in the brown boots of travel, and doubting already the consequences of his first blunder, he floundered into the further one of attempting to patch up the matter by an offer of fifty guineas more!—while I looked on unkindly, with the amused expression of one who saw through the Jockey, tinged with the decorous sense of condolence for the Colonel and the Baronet who had got himself into such an awful fix!

Pray, Sir, make my compliments to the new Eden —and convey to that gallant kinsman, my slightly wearied acknowledgments of his doughtiness, and his knightly scorn of tailors—than nine of whom, he is mightier—and, kind Sir, reason then, with him.

Why should he burden himself with this "baculinum" cumbrance, since he proposes not to use it? Why

prance and brandish about, and call aloud, since he proclaims that its exercise has fallen into desuetude—its custom is obsolete—gone by, and "out of date"? Is this indeed so? . . . Let him ask Mr. Moore's brother.

And so no more of bold buccaneering "baculinum Fred.' Of sweet disposition, *au fond*, and soft heart in belicose back, he has felt the awkwardness of his old-fashioned "argumentum," and, with velvet hand beneath the iron glove, has peaceably restored it to the family *bric-à-brac* of past prowess in the tent—to be brought forth . . . never again.

COURT OF APPEAL

PARIS

FIRST CHAMBER

BEFORE

MONSIEUR LE PREMIER PRESIDENT

DEC. 1897

Whistler versus Eden

MAITRE BEURDELEY'S SPEECH.

THE PRESIDENT: Will you explain the object of your suit?

ME. BEURDELEY: "It is this. The Civil Tribunal of the Seine gave judgment against an artist for not having delivered a picture ordered from him. The Tribunal ruled that the artist was to refund the price of the picture, to hand over the picture itself, and to pay damages with interest thereupon. We appeal against this triple penalty as excessive, and we ask the Court to set aside the judgment. This is the object of our suit.

THE PRESIDENT: Do you offer to give up the picture?

ME. BEURDELEY: On the contrary, we protest against the decision by which we are condemned to refund the price and give up the picture—a picture which has been modified, and which is at present an incomplete expression of the artist's idea, cannot, under the conditions, be assigned to the person who originally commissioned it. I will now explain the relations between my client, Mr. Whistler, and Sir William Eden.

Mr. Whistler's reputation is, happily, such that he needs no eulogy from me. Long before this suit was instituted he had established his claim to the title of a perfect gentleman and a consummate artist. He is well known among us by the works he has exhibited in the Champ de Mars, and by the more permanent exhibition of his art in the Musée du Luxembourg, where one of his greatest works, the "Portrait of his Mother," bears brilliant testimony to his powers.

Mr. Whistler, who is an officer of the Legion of Honour, has achieved a great reputation in France, as well as in England and America. Besides the portrait of his mother in the Luxembourg, the "Miss Alexander," the "Yellow Buskin," the "Sarasate" (which is a masterpiece), and the "Thomas Carlyle" are known to all; and he is further famous by other

works much discussed by the critics, the mere titles of which excited a good deal of public attention. Some critic has said that Mr. Whistler introduced music into painting. It is true that on several occasions he christened his pictures " Symphonies " or " Harmonies."

Mr. Whistler is also known as the hero of a famous lawsuit, already alluded to by our opponents, in which the point at issue was the attack made upon him by the celebrated critic, Mr. Ruskin. . . .

Mr. Whistler, who often lays aside the brush for the pen, published a book which was widely read in England, and has remained famous on account of the discussions to which the lawsuit gave rise. He collected all the criticisms directed against him on the one hand, and on the other, the answers provoked from him by those criticisms. To this famous volume he gave the title, *The Gentle Art of Making Enemies.*

How were the relations initiated between Mr. Whistler and Sir William Eden, with whose merits my opponent will make you acquainted, and whose character will reveal itself in the course of this suit ? Sir William Eden is apparently a rich baronet, who, while devoting part of his large fortune to the enjoyment of those sports so dear to Englishmen, would appear also to have a taste for pictures. He desired to have a portrait of his wife by Whistler. He had

already given commissions of a like nature to other famous painters, such as M. Blanche and Mr. Swan, who had reproduced her ladyship's features on canvas or panel, as Mr. Whistler was afterwards induced to do.

Anxious to give this commission to the artist, Sir William, who was quite unknown to Mr. Whistler, at once began his campaign by writing to the representative of the firm of Goupil in London, and asking what Mr. Whistler's price would be for a little portrait, a head only, of Lady Eden. And here, gentlemen, we have Sir William's acknowledgment of the communication he received from Goupil's:

AIX-LES-BAINS, *June* 5, 1893.

"MR. —,

"Thank you for your letter about Mr. Whistler's charges for "a portrait of Lady Eden.

"I fully recognise and appreciate Mr. Whistler's merits, but I "hoped his charge for a head only would have been much less than "£525. I cannot therefore at that price think of it, especially in "face of my already large expenditure in that line with Mr. Swan. "If you would kindly send me Mr. Whistler's address in Paris *I "would try and call on him on my way through.*

"Yours truly,

"WILLIAM EDEN.

"P.S. Please write to Hotel des Trois Couronnes."

Sir William, then, considered 500 guineas too high a price for a simple head of Lady Eden, but he still

did not renounce all hope of obtaining satisfaction on more favourable terms from Mr. Whistler himself. It was then that he brought into play a new personage. He applied, in a sufficiently adroit and insinuating fashion, to a common friend, Mr. George Moore, a critic. This critic put himself into relation with Whistler, saying: "It is for a friend of mine, on the one hand, and on the other you will have to paint a very lovely and very elegant woman, whose portrait you will be delighted to undertake." I wish to say at once, in answer to a fear expressed by my opponent, that Lady Eden is absolutely without reproach in the matter. "Under the circumstances," said Mr. Moore, "I think you might make very liberal concessions."

"We know quite well your prices," said Mr. Moore, "but as a friendliness, you might set aside your usual considerations and just do a bit of a pastel or a water-colour, the slightest little thing, for just nothing at all—say from a hundred to a hundred and fifty pounds . . ."

In reply to a note from Sir William, requesting a final statement of price, Mr. Whistler sent a letter you will fully appreciate. It shows that, in spite of the figures just mentioned, this suit is not based on a question of money. The quarrel between Sir William Eden and Mr. Whistler rests on a very different issue.

This, then, is Mr. Whistler's letter, gentlemen, the letter which embodies his contract—that contract which he has carried out, and which has given rise to the present suit. Sir William Eden had been introduced to Mr. Whistler; they had met and had

discussed the subject of the portrait, and Mr. Whistler wrote as follows on January 6, 1894 :

January 6, 1894.

DEAR SIR WILLIAM EDEN*—Your letter has only just been handed to me, but this may still, perhaps, reach you in the afternoon. It is quite understood as to the little painting, and I think there can be no difficulty about the sum. The only really interesting point is that I should be able to produce the charming picture, which, with the aid of Lady Eden, ought to be expected. Once undertaken, however slight, for me, one work is as important as another, and even more so, as Calino said. As for the amount, Moore, I fancy, spoke of one hundred to one hundred and fifty pounds.

* *Of course he was well posted in all this by his Moore, but he wanted it in writing, did the Baronet.*

What was the meaning of this? We shall do well to consider this letter carefully, in order to appreciate its tone and its meaning to the full. Whistler says : "Having on my part made certain concessions, I do not think any difficulties can now arise between us, and we shall be quite agreed as to price. As regards the importance of the work, you need not trouble yourself whether I shall paint a head or a full-length. Don't ask whether it is to be a sketch or a finished picture. Both are equally important to the artist. When an artist undertakes a work, he elaborates it till he himself is satisfied with it."

. . . "or words to that effect" — for though I recognise the thoughtless kind feeling, and exquisite taste of my note, no copy was kept—such was the guileless faith in which I met my sportsman's overtures! So that I am obliged to readjust, as best I may, the distracted text, as found in the English press, retranslated from the French translation! and what "Calino" stands for, I'll be shot if I know!

As to the price, 100 to 150 guineas was the sum mentioned in conversation betwen Mr. Moore and Sir William Eden. To put my interpretation of this

letter beyond a doubt, allow me to read it over to you again, and you will see that I have translated it accurately.

[Me. Beurdeley here read the letter again.]

You see, gentlemen, that it was now a question of £100 to £150, instead of the 500 guineas asked at first for a head. One hundred guineas is the sum we shall have to discuss presently. It represents £105, or 2625 francs.

I was right, then, in saying that money was not Mr. Whistler's object in this matter. You will now see how Mr. Whistler's generous treatment of Sir William and Lady Eden was rewarded.

He set to work, and accomplished a task you can judge of but imperfectly from the picture I now place before you, in which a new face and a new *ensemble* have taken the place of the originals. Still, I think you will recognise even now the wonderful harmony of the arrangement and the very individual art displayed in the treatment—an art which shows itself in the setting of an aristocratic woman, whose distinction may be divined even in the unfinished work, among surroundings perfectly appropriate to her.

When the portrait was all but finished, on February 14, 1894, Mr. Whistler received a visit from Sir William Eden. It will be necessary to call particular attention to this date, and its special significance in

England. February 14 is the festival of St. Valentine. In England it is the custom on this day to offer little presents, to exchange little compliments, accompanied sometimes by a flower, a bouquet, a bit of coloured pasteboard, a sort of visiting card; sometimes by a more costly offering, such as a diamond ornament, a jewel, or even a sum of money. This ancient tradition still obtains across the Channel, and I have among my documents some samples of old-fashioned and also of contemporary valentines. They consist chiefly of sheets of paper with pictures, bearing some such inscription as: "I send you this with my love"; or of cards, with legends such as this: "My Valentine, I give you my life; give me your love."

On St. Valentine's Day, then, the day proper to the interchange of presents between friends and lovers, Mr. Whistler received a visit from his new friend, Sir William Eden. Sir William saw the artist at work on the picture, and exclaimed: "The portrait is charming; it is more delightful every time I see it. I am perfectly satisfied." On taking leave, he informed Mr. Whistler that he was about to start for India on a sporting tour, and, taking an envelope from his pocket, he handed it to Mr. Whistler, saying: "Here is a valentine for you. Look at it presently, after I have gone. Don't bother about it just now." When Sir William had left, Mr. Whistler opened the letter.

As he sat on the sofa, day by day, watching the little panel grow, from the mere sketch he might have expected, to the finished picture it became, was the friendly Baronet turning over in his mind a means of showing the excellent simpleton at the easel, his gratitude and appreciation, without exposing the misery of his own early machinations?—Well, No!

He was saying to himself, "I have jockeyed him once. Now how shall I do him altogether!" And THEN HE INVENTED THE VALENTINE.

Taking him by the lapel of his coat, the Noble Sportsman thrust the clever envelope into the smiling painter's pocket, and, in a burst of English heartiness: "There is your valentine!" And, with swift precaution, "Don't open it until you get home!" In point of fact until I get clean away—and off to South Africa!

It contained a cheque for 100 guineas, the minimum mentioned in the preliminary negotiations.

Gentlemen, I do not for a moment dispute that, taking into account the terms of the letter I have twice read to you, Mr. Whistler was morally bound to accept the sum of 150 guineas, no matter how much care he bestowed on the portrait, no matter how perfect a work of art he made it. A maximum had been agreed upon and also a minimum. But, without looking at the question from a strictly legal point of view, the artist certainly thought that, by all the laws of courtesy at least, he himself was the person best fitted to determine the mean between the maximum and minimum—that he, who knew as none other could the amount of skill, knowledge, and artistic merit that had gone to the production of the work, might reasonably be allowed to decide whether he should ask the maximum, the minimum, or some intermediate price. Now, what had actually happened? Sir William, under cover of a friendly compliment, a graceful little courtesy, had *slipped the minimum into his hand in the cunning guise of a valentine*, arrogating to himself the right of deciding the price of *the work by which he is to profit!*

"Or que se passait-il?—Sir William Eden, sous la forme affectueuse d'un compliment, sous les dehors d'une gracieuseté, d'une Valentine habilement déguisée, glissait le minimum, se faisant juge, lui qui allait profiter de l'œuvre et qui avait applaudi aux mérites de l'artiste, du prix qui devait rémunérer celui-ci.

"Whistler se dit: 'Je suis joué! J'ai eu affaire non pas à un ami, non pas à un gentilhomme; mais à un *aigrefin*.'"

Mr. Whistler naturally said: "I have been tricked! I have been dealing, not with a friend, not with a gentleman, but with a sharper. He thinks he has

been very cute, but I will give him a lesson in cuteness! He brings me a valentine; I accept it, by all means. A valentine is a present, a trifle offered in token of friendship. I will take it as such, and we shall see what happens!" Such, gentlemen, was the idea by which Mr. Whistler was guided, when, on the same day, February 14, 1894, he addressed the following letter to Sir William Eden. Before reading the letter to you, however, let me read you the note enclosed with the cheque for 100 guineas:

4, Rue de Presbourg, Paris,
February 14, 1894.

Dear Mr. Whistler—Herewith your valentine—cheque value one hundred guineas. The picture will always be of inestimable value to me, and will be handed down as an heirloom as long as heirlooms last!

I shall always look with pleasure to the painting of it—and, with thanks, remain

Yours sincerely,
William Eden.

Mr. Whistler laid aside his brush, seized his pen, and wrote as follows:

110, Rue du Bac, Paris,
February 14.

My dear Sir William—I have your valentine. You really are magnificent!—and have scored all round.

I can only hope that the little picture will prove even slightly worthy of all of us, and I rely on Lady Eden's amiable promise

to let me add the few last touches we know of. She has been so courageous and kind all along in doing her part.

With best wishes again for your journey,

Very faithfully,

J. McNeill Whistler.

Gentlemen, you will understand the true character of this reply. It was certainly ironical, as the scene which took place on the following day proved. Sir William, not very well pleased with the letter, went to the painter's studio, and a scene took place, as to the general drift of which there has been no dispute, though some of the details are contested. Our account of the interview was corrected by our opponent as follows: Mr. Whistler would not receive Sir William Eden; he merely said, "You are magnificent," repeating the phrase several times.

As a fact, gentlemen, the interview was not so concise as all this. Mr. Whistler received Sir William the next day, February 15, at the door of his studio. Sir William spoke first, saying: "I have received a letter from you that I don't understand, a very rude letter—what do you mean by 'I have received your valentine'?"—"You send me a valentine: I acknowledge it politely."—"I consider your letter insulting." Whereupon Mr. Whistler begged to offer him every satisfaction, and placed himself entirely at his disposal, but Sir William remembered that his journey

D'APRÈS NATURE.

E. "I have received a letter that I do not understand."
W. "Like many others."
E. "A very rude letter."
W. "Impossible—I never write them."
E. "But I don't understand."
W. "There are those who pass their lives in not understanding my letters."
E. "You have written this: '*My dear Sir William, I have your valuation*'—"
W. "*Valentine*, you mean—*valuation*, ha! ha! is your

accident!—You send me your valentine; I send you my graceful acknowledgment."
E. "But you say: '*You really are magnificent*'—"
W. "Well, are you not?"
E. "'*And you have scored all round*'—I had no desire to score."
W. "But as a sportsman, my dear Sir William, that's your luck!"
E. You seem to wish to insinuate, sir, that I have been mean in my dealing

with you. If you tear up that cheque I will give you this one for one hundred and fifty guineas."

W. "Put up your papers, my dear man, I can't be wearied with more business details. The time has gone by."

E. "Well, I know that the picture is a beautiful one, and that I am lucky in having it. But *a man is a d——d fool who pays a larger price for anything he can get for a smaller one.*"

W. "..... ! !"

to India was immediate. Mr. Whistler said "*he* was not going, and he would wait for him." Sir William, however, began to argue about the 100 or 150 guineas.

This was how matters stood down to the time when Mr. Whistler exhibited the picture at the Salon of the Champ de Mars in 1894. And here I may be allowed to explain the conditions under which it was exhibited.

The picture had, of course, never left Mr. Whistler's studio, for the day after the interview Sir William Eden went away to shoot in India, only returning at the end of the year. It was Mr. Whistler himself, therefore, who exhibited the picture, together with some other works; it was he who sent it to the Champ de Mars, he who had it fetched away, and he who reinstalled it in his studio.

The portrait figured in the catalogue as No. 1187, "Brown and Gold. Portrait of Lady E. . . ."

Not until the end of 1894, gentlemen, as I have said, did Sir William Eden return from India. He then sent a summons to Mr. Whistler, demanding the delivery of the picture. I have the summons here. It will be well, taking into account the proceedings that followed, to here explain the claim put forward by Sir William Eden.

Sir William, then, summoned Mr. Whistler, of 110

Rue du Bac: "To give up to the claimant, within twenty-four hours, the portrait of his wife, Lady Eden, ordered by him, and paid for at a price of £105, or in French money 2625 francs, as can be proved; and the claimant declares that, in default of such immediate delivery, he shall take such proceedings as may be necessary."

The next day Mr. Whistler—acting through his solicitor in London, and the learned advocate of the Tribunal, Maître Ratier, to whom he entrusted the matter—sent back the sum of £105, or 100 guineas, and placed it at Sir William Eden's disposal.

From that moment Mr. Whistler considered himself relieved from any obligation towards his former client. He had in his possession the picture you see before you, representing Lady Eden in an interior, the composition of which you will be able to appreciate. It is a composition for which the artist himself had a special affection, and to which he himself gave a special significance when, in the Exhibition of 1894, he placed it before the public under the title "Brown and Gold." The artist was unwilling to lose this composition, this arrangement he had created. Wishing then to preserve the work which he considered entirely his own, he modified the composition by careful erasures, preserving only the substratum of his work, so to speak, and painting

out Lady Eden's face and figure. Then, very carefully, the artist brought all the skill, distinction, and inspiration of his brush to bear on the creation of a new portrait on the same panel, and sketched in another person. There was a certain gentleman named Hale in Paris at the time, who wanted a portrait of his wife. It is this portrait of Mrs. Hale which figures, or, to be more exact, begins to figure, on Mr. Whistler's panel, for, as you see, the picture is quite unfinished, both as a whole and in detail. Mr. Whistler, then, has replaced the original picture by a new one, preserving the general arrangement, but modifying details, anxious to give an appropriate setting to this new figure, and, incidentally, to secure for the delight of posterity. I may mention in passing that the flower just indicated to the right of the picture is, as Sir William Eden has himself pointed out, an addition made since he last saw the picture.

Such were the circumstances under which we were cited to appear before the Civil Tribunal of the Seine in 1894. In this citation Sir William Eden, confirming the summons already served, demanded the delivery of the picture, and, in addition, damages with interest to the amount of 1000 francs (£40).

We at once replied, stating, as was true, that Mr. Whistler had done away with the picture, and that, as a portrait of Lady Eden, it no longer existed. I have

explained that the work had been partially effaced, and that a new composition had been substituted, which is as yet unfinished.

Sir William Eden hereupon changed his ground. He demanded the return of the 100 guineas he had paid for the picture, and, *in addition*, 10,000 *francs* (£400) *damages with interest*. On February 15 he made some further additions to his pleadings. He demanded the delivery of the portrait in its then condition, and finally, on March 6, 1895, he asked the Tribunal to give an order for the destruction of the picture if, finding it no longer represented Lady Eden, or that it now represented some other person, the Court was powerless to enforce his claims to its possession.

Maître Beurdeley here proposed to read the report of the proceedings in detail, but, at the suggestion of the President, proceeded to read the judgment pronounced on the various issues by the lower Court on March 20, 1895.

The Court then adjourned.

THE CASE was re-opened by Maître Beurdeley the next day as follows:

Gentlemen, at the conclusion of yesterday's sitting I placed before the Court the judgment pronounced by the Sixth Chamber of the Tribunal on March 20,

1895. But, as you will remember, I had no time to go into the procedure which resulted in this judgment. You will therefore allow me to go back a little, and to explain the order in which the various questions at issue were placed before the Court.

I told you, gentlemen, that a summons was served upon Mr. Whistler by Sir William Eden on November 8. Its object was to obtain possession of the picture. On the following day, November 9, 1894, we promptly returned the £105 through our banker and solicitor. I have all the documentary evidence here, and it has been examined by my opponent. On November 20 we were cited to appear before the Civil Tribunal of the Seine, and Sir William Eden demanded the delivery of the picture, and 1000 francs (£40) damages with interest. We replied that the picture no longer existed as a portrait of Lady Eden. These, gentlemen, were the exact terms of our argument: "Seeing that Mr. Whistler, after returning the 100 guineas, considers himself free from any obligation to Sir William Eden, taking into account the behaviour of the latter and the circumstances in general; and seeing further that Mr. Whistler has therefore painted out Lady Eden's face, retaining only the general composition, in which he intends to introduce another head."

You will see that this statement was not quite accurate, and that we accordingly corrected it later

on. The pleadings were drawn up from instructions given to the advocate in English, which were imperfectly understood and imperfectly translated. When I showed them to Mr. Whistler, he said: "That's not quite accurate." You will see how we rectified the inaccuracy, but before we did so Sir William Eden gave an entirely new turn to the proceedings by his pleadings of February 26, 1895. He says: "In view of this extraordinary fact (*i.e.*, the alteration of the picture), the plaintiff is under the necessity of revising his pleas, and asking for damages with interest." He therefore claims the repayment of the sum of 2625 francs (£105), the payment of a sum of 10,000 francs (£400) damages with interest, and all the costs of the proceedings. The handing over of the portrait is no longer insisted upon, this being clearly out of the question.

Figure, in English, becoming easily, in French, *figure* or *face*.

On February 27, 1895—the next day—Sir William Eden reconsidered the matter. He asked the Court to admit his first pleadings forthwith, and alternatively, if Lady Eden's portrait proved to be mutilated, as asserted by Mr. Whistler, to order the delivery of the portrait in its actual state under penalty of a fine of 100 francs (£4) a day, with interest, for every day's delay—also to condemn Mr. Whistler to repay to the plaintiff the sum of 100 guineas given for the picture, with interest from the day on which it

was paid, and further, a sum of 10,000 francs (£400) damages with interest.

We now come to the rectification of Mr. Whistler's own pleadings, rectifications not of his main position, but of the inaccuracies in the statement made.

"Mr. Whistler wishes it to be understood that it was Sir William Eden who approached him, requesting him to paint a portrait of Lady Eden;

"That he (Whistler) agreed to a very exceptional reduction in the price first suggested;

"That he painted not only the head, as Sir William had wished, but the whole figure, and this greatly to Sir William Eden's satisfaction;

"That, on his side, Sir William gave Whistler the minimum sum spoken of in their correspondence, handing it to him in the guise of a friendly gift;

"That Whistler has entirely repainted the picture, retaining only the composition and general harmony, and substituting the portrait of another sitter for that of Lady Eden;

"That it was by an error of transcription in the instructions given by Whistler to his advocates that Lady Eden's head was stated to be the only part of the picture obliterated."

As to Sir William Eden's final pleadings, gentlemen, I shall have to go over them with you again.

There was a further modification of these on March 6, 1895:

"Whereas the plaintiff, on examining the picture, formally recognised it as his property, identifying it not only by the tonality of the face, but also by all the accessories, the furniture, the hangings, even the dress worn by Lady Eden when she sat, and seeing, further, that he declares the only changes are the modification of the features and the introduction of a flower on the right;

"Whereas this is unquestionably the picture which, as he ordered it and paid for it, became the property of Sir William Eden;

"And whereas, if the Tribunal considers the substitution of another face cancels the plaintiff's right to the possession of the picture, it would have reasonable grounds for ordering the panel to be destroyed, and for giving a verdict for the plaintiff as regards the refunding of the price and the damages. . . ."

This, gentlemen, was the situation when we appeared before the Tribunal, and when the Court gave the judgment I have had the honour to read you.

This judgment recapitulates the facts I have laid before the Court with tolerable accuracy. It accepts the statements that Sir William took the initiative in the matter, that, introduced by Mr. Moore, he

called on Mr. Whistler in his studio, and asked for a reduction in the price mentioned by Mr. Whistler, and that Mr. Whistler very gracefully agreed to the price suggested by Mr. Moore or Sir William Eden. It further admits that Sir William arrogated to himself the right of judgment in the matter of maximum and minimum.

You will remember, gentlemen, how the cheque was conveyed to Mr. Whistler on Valentine's Day. You will remember under what conditions and with what irony Mr. Whistler received this valentine. The judgment speaks of his having "cashed the cheque." What he really did was to pay the cheque into his banking account.

The judgment further says (and here it is not quite accurate) that the relations between Sir William and Lady Eden and Mr. Whistler continued to be perfectly amicable. This is not quite true. The fact is that there have been no relations of any sort between them, Mr. Whistler never having since met his client or the charming model he was to have reproduced. He went on with his picture, it is true, but without the help he had originally hoped for from his sitter.

The Tribunal opined that the exhibition of the portrait was sanctioned, at least tacitly, by Sir William Eden. But you, gentlemen, will under-

stand that there was no opportunity for any sanction of the kind, as, immediately after the scene I have described, in which Mr. Whistler congratulated Sir William on his "magnificence," the latter started for India, whence he returned some time after the exhibition, in the month of November, in fact, when he claimed the picture. I have now established the facts of the case; we shall be able presently to see how they are affected by legal considerations.

The legal aspects of the case, gentlemen, have been pronounced upon by the judges in the first trial. They gave judgment against my client on three counts. They ordered him to hand over the portrait, which they declared to be still Sir William Eden's property; to refund the 100 guineas paid for it and to pay damages to the amount of 1000 francs (£40 with interest.

This my client and I and many other persons consider excessive. It is obviously excessive to award Sir William Eden both the article and the price paid for it, with damages to boot.

You are all aware, gentlemen, of the sensation this case has made. The judgment naturally provoked a good deal of discussion, both here and in England. I will add nothing to these comments. You administer the law, regardless of what the public at

large may say or write. But you will allow me to lay before you a letter written to an English newspaper by my client the day after the trial. The special interest of the document is this: it sums up the facts; it brings out the points I have had the honour to urge upon you; and further, it reveals the individual characters of the litigants. The letter I am about to read you was written under these circumstances. An English journalist, or, rather, an English barrister, wrote to the *Pall Mall Gazette* applauding the judgment given by the Sixth Chamber, and arguing that no special privilege can be claimed by artists in questions of contract; that, like all other citizens, they are bound by the obligations they have undertaken; that the artist and the shoemaker work under precisely similar conditions, and are equally responsible for the due delivery of their wares, whether these be shoes or pictures.

Mr. Whistler proceeded to work out this argument to an extreme conclusion, in the vein of humour peculiar to himself—that is to say, in a very witty and good-tempered fashion. I will read you a translation of his letter, made, not by a sworn translator, but by his intimate friend, the distinguished man of letters, Stéphane Mallarmé:

SIR—I find no objection to "Q.C.'s" theory, that the law for painters and cobblers should be the same. He

may be quite right, only he doesn't get far enough, and misses the point!

If a pair of slightest slippers be ordered, through wheedling of friend, on the understanding that they shall cost from half a sovereign to fifteen shillings, it is the *cobbler only who shall determine* when, in his own folly, and under the approving eye of the appreciative customer, the flimsy slippers have grown into elaborately dandy boots, and are off the last, whether half a sovereign or fifteen shillings, or, according to his sense of their beauty, any sum between shall pay for them.

And if, before his natural gentleness has allowed him to make out his bill, the very smart customer cuts the ground from under him, and, in the sly form of affectionate "Valentine," forces the meaner sum upon him, hoping to make the situation of a delicacy beyond his tackling, he has every right, as noble cobbler, to be indignant, and send his pitiful client about his business!

If, however, the wicked and enthusiastic cobbler see through the trick, and wish to expose, *publicly*, the ungrateful trickster, then he accepts the "Valentine," though only temporarily, and when, later on, the boots are demanded through sheriff and lawyer, he sends back the half-sovereign, and refuses to give up the boots—saying effectually: "Sue me for them! Come and claim them in open court. Come and tell the pretty story before the people, that the world may know, and my fellow cobblers be warned, and that you may go barefoot and horny among them ever after. Sooner than that you be shod by me I will rip off the uppers, or fit them to another!"

"Pourquoi, Monsieur"—I was prepared for the question—"pourquoi, si vous n'aviez pas l'intention de livrer le tableau, aviez vous accepté le chèque?"

"Pour qu'il vienne me *le réclamer ici—devant tout Paris!*"

Now, this is what has happened. His story is told!—and the whine of it remains in the ears, and the odour of it in the nostrils, of my confrères—and I doubt if the insinuating amateur will again

unhook in a hurry any picture, humbly cozened for as sketch, from easel in any studio at home or abroad.

Yours, &c.,

J. McNeill Whistler.

Paris.

Gentlemen, this letter removes any doubt as to the nature of the sentiments by which Mr. Whistler was actuated. He certainly meant to play off the stratagem of the valentine by another stratagem. He said: "You offer me a valentine; I accept your valentine." It is clear that, in his letter to the *Pall Mall Gazette*, he intended to read a lesson in behaviour to a man he looked upon as an ill-bred person, a rather sorry gentleman. He hoped to see him admonished by the Tribunal of the Seine. Was he right, or was he mistaken? He was, no doubt, mistaken, for law courts cannot adjudicate on these points. Tribunals, or, at least, our French tribunals, are not called upon to say whether a man has acted delicately or indelicately; they decide questions of law or questions of fact. But I would, nevertheless, ask you to compare the respective conduct of the artist and of his client. You will bear it in mind, gentlemen, when you have to consider the question of damages. You will remember how Sir William Eden insinuated himself in Whistler's studio; how he himself named the price he was willing to pay; you will remember the care

with which Mr. Whistler executed the portrait, and finally, how the rupture was brought about.

I now come, gentlemen, to the legal questions arising out of the facts I have laid before you. The Court condemned Mr. Whistler to return the price of the portrait, to hand over the portrait itself, and to pay damages to the amount of 1000 francs (£40).

But what, as a fact, does Mr. Whistler owe the plaintiff? One thing he certainly owes him, as we have admitted from the first—the sum of 100 guineas paid for the picture. This, as you know, he offered to return at the beginning, and it has always been at Sir William Eden's disposal. But the money itself was never actually tendered, and my client is therefore liable to be condemned in damages and interest on this indictment. I recognise this fact, just as the Court recognised it. But, as the Court condemned us to make restitution of the money, we were astonished when it further condemned us to give up the portrait; for it is difficult to see how Sir William Eden's claims, both to the portrait and the money, are to be reconciled.

My opponent argues that the Court, in giving judgment, made this award by way of damages on the first count. Indeed, one of the plaintiff's pleas is, I find, that Mr. Whistler be ordered to pay 2625

francs damages with interest to Sir William Eden on the first count.

But, unfortunately for Sir William Eden, I do not think the Court was long of this way of thinking, for, if you turn to the summing-up, you will find not only that this plea is abandoned, but that a contrary one is put forward.

In the summing-up, in short, we read as follows: "Whistler condemned, first, to give up the portrait; secondly, to refund the sum of 2625 francs, with interest at 5 per cent. from the day on which it was paid him by Eden." Then, as a third count, we have: "Whistler condemned to pay to Eden the sum of 1000 francs damages and interest." Here we have the real damages with interest; they are distinctly specified, and indeed, limited to these 1000 francs. The 2625 is another matter altogether, and is described as a restitution of the price paid for the picture by Eden, with 5 per cent. interest from the day of payment.

This, gentlemen, is the exact situation. I therefore ask the Court to confirm the statement of the summing-up on this point, and not the pleading.

If, gentlemen, this first judgment is confirmed by the Court, I think that when we come to the second, which orders the delivery of the picture to Sir William Eden in its present state, we shall find it

very difficult to carry out. I can only repeat what I have already said, that it is difficult to see how Sir William can claim on the one hand the price of the picture, and on the other the picture itself.

There is another reason why Sir William should not have the portrait. It is no longer a portrait of his wife. This the judgment itself admits. When we take the third count, the Court will say: "As Sir William Eden has not got what he ought to have—namely, his wife's portrait—we shall give him damages, seeing that he can't have the portrait, which is no longer that of his wife."

Now what, in fact, was the contract? Not that Mr. Whistler should paint a portrait of some sort, but that he should paint a portrait of Lady Eden. As Lady Eden's portrait no longer exists, there can be no reason why another portrait or sketch should be handed over to Sir William Eden.

There is yet a third reason, gentlemen, why this picture should not be given up. We may set aside for the moment the eventual rights of some third person to the work. The picture as it now stands is not finished. It is a mere sketch, a design; *you cannot oblige an artist to give up an unfinished work, and allow the incomplete creations of his heart and brain to circulate in the world.*

At present, gentlemen, we have a preparation, a

harmony in brown and gold; something is eventually to dominate those harmonious tints—a new face; but as yet it is in the stage of conception, not in that of birth. Hence it is absolutely impossible both to obey the ruling of the lower Court and to satisfy Sir William Eden.

What, then, were the considerations which led the Court to award Sir William Eden, not only the price of the picture, but also a picture which, by his own showing, is no longer his wife's portrait, but the portrait of some other person, and, in any case, an unfinished work? The Court was influenced by certain legal considerations—by, in my opinion, a mistaken view of the law, and by the application of certain articles in the Code bearing on sales, to the matter in which we are now engaged.

The Court was of opinion that, "from the moment when Whistler took the cheque—that is to say, on February 14 or 15—there existed a formal agreement between him and the plaintiff as to the price of the article to be delivered." This, gentlemen, will of course recall to you the following article of the Code:

"A sale has been concluded between the contracting parties, and the property legally acquired by the buyer, as soon as the thing and the price have been agreed upon, although the thing may not yet have been delivered nor the price paid."

In this case the price was paid, but the thing was not delivered. Article 1583 of the Civil Code was accordingly applied by the Court. This will at once be apparent to you, gentlemen, when you read over the judgment, and, above all, when you read the remarkable and ingenious pleadings of M. Lénard, the substitute of the Procurator of the Republic, who formulated the thesis adopted by the Court. Taking this special view of contract again, M. Lénard further quoted Article 1601 of the Civil Code:

"If at the time of sale the object sold were entirely destroyed, the sale would be cancelled. If it were only partially destroyed, the buyer would have the option of repudiating the purchase, or demanding such part of the object as had been preserved, after causing a valuation thereof to be made."

This, gentlemen, was the point insisted on by M. Lénard in his pleadings. The theory adopted by the Court was this: "The day Mr. Whistler wrote the letter acknowledging the receipt of the valentine there was a transfer of property. The work which, up to this time, had belonged to the artist, became part of Sir William Eden's estate, in virtue of the law of sale; his proprietary rights have not been modified, for the object of his contract has not been wholly destroyed; it was only partially destroyed; the panel, the general harmony, the composition still exist. The

Court even declares that the picture as a whole and in part belongs to Sir William Eden."

Even if we allow the law of sale to be applicable here, we shall still have certain objections to make. Was there an agreement between the buyer and seller as to the object and its price? This seems very doubtful. The object was not clearly defined on February 14. You know the picture was not finished. Remember Mr. Whistler's letter, in which he said: "With Lady Eden's help, I hope to make the work complete." The artist, then, had not yet said his last word, or given his finishing touches. As regards the price, it was determined by Sir William Eden, but certainly not by Whistler. The Court, I know, was unable to accept the whole letter as ironical. But clearly, it implied certain reservations. The repetition of the word *valentine*—"I accept your valentine"—certainly had a meaning. "You are really magnificent, and have scored all round," certainly had a meaning. The sequel plainly shows that Mr. Whistler had certain reservations in his mind. His plan, as you know, was to retain the picture, to force Sir William Eden to claim it publicly, and then to put him to public confusion. There was no agreement either as to object or to price. Even if we admit that the case comes within the meaning of Article 1583 of the Code, we shall not admit that

there was the necessary agreement between buyer and seller.

Besides, gentlemen, you all know, and it is a fact universally recognised, the artist does not give up his work, and the transmission of a work of art does not take place, save by the formal consent of the artist. The artist is the master of his work from the elemental point of view, seeing that he is its creator. The artist is the owner of his creations. He continues to be the master and owner of his work till the very last moment, till the day when he is himself completely satisfied. There was no act of Mr. Whistler's which could lead you to suppose that he was willing to transmit his property to Sir William Eden.

These principles, gentlemen, are firmly established. With your permission I will read you two pages from M. Pouillet's work on the Law of Literary and Artistic Property.

(Maître Beurdeley here read passages in support of his argument.)

Such, then, are the principles laid down. *The artist who creates a work is its owner until he deliberately gives it up.* Why is this so? Here I must ask my client's leave to differ from him. We are not only concerned with an obligation to execute which resolves itself into damages when the agreement is not carried out; whatever my client may

think, there *is* a difference between an artist and a shoemaker, and in the domain of art and literature there are special rules to be observed.

Here again, gentlemen, the law has been defined for us by authorities. What, it has been asked, is the nature of the contract by which an artist receives an order for a work of art? Is it a sale, an agreement to work for hire, or a commission? It has been established that it is a contract *sui generis*. I will quote Messrs. Aubry and Rau on this point.

(The President here remarked that this was unnecessary, the point being clearly established.)

What we have to consider, then, is the obligation to execute. Mr. Whistler, we may take it, continued to be the owner of the picture, although at a given moment it may have appeared finished. He continued to own it, not having given it up to the claimant, although he had exhibited it. The exhibition was, in fact, an experiment, a sort of rehearsal, as we may gather from the fact that on several occasions incomplete works, works unsigned, and even unfinished, have been exhibited as pictures by Whistler.

It is evident, then, that Mr. Whistler continued to be the owner of the picture. If, therefore, he destroyed any one's property, it was his own. If he can justly be called upon to pay damages, which you may

the more reasonably claim, the nearer you can show Sir William Eden to have been to his object—the more closely he approached to the acquisition of the work—the more evidently it seems to have been intended for him at a given moment—it is nevertheless clear that you can claim nothing beyond these damages.

Well, gentlemen, Mr. Whistler has modified the picture. It is no longer a portrait of Lady Eden. But the Court might have scruples on one point, and I hasten to reassure it. If the picture were still a portrait of Lady Eden, the Court might think her husband justified in claiming it; it might think, at any rate, that his original plea for the destruction of the panel was a reasonable one. We go to an artist, and request him to reproduce the features of some one who is dear to us. The artist, either because of some question of money (which is not, however, the case here), or because of some question of appreciation (which apparently led to the rupture between Whistler and Eden), declines to give up the thing we ordered. We cannot allow that the artist has any right to retain as his own property the presentment of the beloved person whose features we asked him to reproduce. The very idea is alarming. It would not be unreasonable to demand the destruction of the work under certain circumstances, but it would be highly

unreasonable to demand the delivery of an imperfect work. Gentlemen, you can now judge how far this picture can be called a portrait of Lady Eden. It is not a portrait of any one; it is no longer the portrait of Lady Eden; it is not yet the portrait of Mrs. Hale.

MAÎTRE BUREAU: But Mrs. Hale's husband has claimed it.

MAÎTRE BEURDELEY: I will explain that presently. Allow me to continue as systematically as I can. I will take the various objections I have to deal with in their order. I say you have only to look at this portrait to see that it is not the portrait of any special person. As I said just now, something has got to be created, a personality as yet undetermined. It should have been the personality of Lady Eden, for it was she whose features are indicated; but it is no longer her portrait, and, on the other hand, it is not yet the portrait of Mrs. Hale.

As far as Lady Eden is concerned, the portrait has ceased to exist. What proof of this statement can we bring forward? First of all, we have the declaration of the lower Court itself: as Sir William Eden cannot have Lady Eden's portrait, we must give him damages. My opponent admits that alterations have been made in the portrait, that the face, indeed, has been completely modified, that the *ensemble*, too, has

been modified by the introduction of a flower on the left of the picture. We maintain that the original picture has been practically effaced, that only the general composition has been preserved, that Lady Eden's pose was retained, it is true, but that the head and the hands are no longer the same, although the dress has been adapted to the new conception.

Indeed, gentlemen, if I may be allowed to say so, a sincere artist, a master of harmony like Whistler, could not alter the personality of a sitter without modifying the whole portrait. He could not simply introduce a new face among settings and surroundings designed for another.

What does Mr. Whistler himself say? "I have retained the general arrangement." The general arrangement is the painter's own creation, something apart from the portrait; it formed no part of your commission to him; this composition, this harmony, this arrangement of accessories is his, to apply to another subject if he so pleases.

This, gentlemen, is my answer to my opponents. The Court need have no scruples. What Mr. Whistler retains can in no way offend the just susceptibilities of Lady Eden or her husband. The picture, as a portrait of Lady Eden, has disappeared.

But here, gentlemen, my opponent challenges me. He says, "Mrs. Hale no longer claims the picture,

though she claimed it at the first trial." I shall probably be asked how it is that she no longer appears.

The matter is simple enough. Mr. Whistler, considering himself the rightful owner of the picture in spite of the decision of the lower Court, adapted the composition originally intended for Lady Eden to another head. This head is at present in an embryonic state. Mrs. Hale, anxious to have this composition, which Mr. Whistler promised her (another graceful concession on the artist's part), intervened through her husband at the first hearing; but her plea was set aside on the ground that there had been undue delay in intervening. Mrs. Hale's husband no longer appears; and why? Because a long interval has now elapsed; because he is now in America; because he has given up all hope of obtaining the portrait. As by the judgment of the Court Mr. Whistler was forbidden to continue his work on the picture, Mrs. Hale's husband lost his interest in the matter, and no longer appears with us. He would, in fact, be rather inclined to appear against us, in which case I should say to him, as I say to Sir William Eden: "You have no right to the picture; it is not finished. It is still my property. As long as it remains unfinished, as long as I refrain from handing it over to you by a

voluntary act, which would be tantamount to an admission that I consider the work final and perfect, you have no claim upon it. It still forms part of my estate, and if I choose at my own risk and peril to alter the composition, to modify either the figure or the accessories, I shall do so freely."

This is the situation. I have nothing more to add, unless it be that, from another point of view, you cannot compel Mr. Whistler to give up an unfinished work, an incomplete idea. By a deliberate act Mr. Whistler made it impossible that he should carry out his contract with Lady Eden. He must therefore pay damages; the question is purely one of damages. This is laid down in Article 1142 of the Code. You will allow me to read it, as it contains the root of the whole matter.

"All obligation to execute or not to execute is to be settled by the award of damages, in case of non-execution on the part of the seller."

And in Dalloz' annotated code I read further:

"When execution has been rendered impossible by the act of the defaulter, no penalty can be asked for but damages." And we are referred to the heading "Obligation," No. 713, in *La Jurisprudence Générale.* There can be no doubt, gentlemen, on this head. All we need therefore consider is the question of damages.

The Civil Tribunal of the Seine condemned Mr. Whistler to pay 1000 francs damages with interest. You will form your own conclusions, gentlemen; but I am of opinion that the Court had some difficulty in justifying this award. Our opponent pleaded the trouble Lady Eden had been put to, the fatigue and inconvenience involved in sitting to an artist so fastidious, careful, and exacting as Mr. Whistler. The Court, however, disregarded this plea, and justified its award by saying, "Mr. Whistler failed to supply what he agreed to supply; Sir William Eden has a right to damages since he is not to have Lady Eden's portrait."

He is not to have it, I am quite sure; but he has compensation—he has the money he ventured for the portrait. And before assessing damages, the Court must remember the respective proceedings of patron and client in this matter.

I need not go into the details which Mr. Whistler has several times given you of the relations between himself and his client. But here again the Court might be influenced by certain scruples. Here, they might say, was the father of a family who wished to bequeath to his children a portrait of their mother, desiring it to be preserved as an heirloom. Would this be true in the case of Sir William Eden? I regret to have to say no. You know, gentlemen,

"Je ne veux pas revenir sur le récit qui a été fait plusieurs fois par M. Whistler lui-même des rapports qui ont eu lieu entre l'artiste et l'amateur. Ici encore, il y a un scruple que pourrait avoir la Cour. Elle pourrait se dire : Voilà un père de famille qui voulait léguer à ses enfants le portrait de leur mère, qui voulait que ce fût conservé comme un héritage de famille et que ce soit un dépôt sacré se transmettant de génération en génération. Il y a là une satisfaction morale qui peut dans une certaine mesure se traduire par des dommages et intérêts. Mais est-ce le cas de Sir William Eden? J'ai le regret d'être obligé de répondre: Non. Vous savez, Messieurs, que je n'aime pas à mettre en cause directement la personne des adversaires, je trouve que souvent cela est inutile, que c'est parfois dangereux,

mais là je suis dans la nécessité de vous dire ce qu est Sir William dans le rapport que cela a avec la question que vous avez à résoudre, c'est a dire la question des dommages et intérêts.

Sir William Eden qui se donne comme un amateur est en réalité un amateur spéculateur de tableaux. Vous allez voir que ce n'est pas du tout pour sa famille qu'il fait faire le portrait de sa femme pour le transmettre à ses enfants, et cela pour une raison bien simple c'est que le portrait de sa femme et même le portrait de ses enfants, il les met en vente, il en tire argent, il en fait des spéculations ! J'ai communiqué à cet égard à mon adversaire des pièces qui sont accablantes au point de vue moral."

that, as a rule, I avoid personalities in dealing with my adversaries. They are often irrelevant, and sometimes dangerous. But it is my duty to tell you what Sir William is, as this has a direct bearing on the question of damages you will have to decide. Sir William Eden, who poses as a patron of art, is, in fact, an amateur picture dealer. I shall show you that he does not have his wife's portrait painted for his family, or with any idea of handing it down to his children. His commissions are speculations. He offers the portraits of his wife and children for sale and makes a profit on them. I have communicated certain documents to my adversary which, from a moral point of view, are overwhelming in this connection. The first of these is a letter from Messrs Boussod Valadon. It is written from the London house of the firm to Mr. Webb, Mr. Whistler's solicitor, and is as follows :

October 8, 1897.

DEAR SIR—In reply to your letter I beg to state that shortly after the lawsuit in Paris, Sir William Eden, who has been in the habit of paying us occasional visits for some years past, came into our gallery to see some pictures we were exhibiting. He spoke of the lawsuit, and I mentioned that I had seen Lady Eden's portrait at the Salon. From what I had heard, I knew that Sir William did not care for the picture, but, knowing its commercial value, I told him I was ready to make him an offer of £200 for it on behalf of my firm. He declined it, on the grounds that the picture was worth a great deal more. I then said : Well, we will give you £250. He replied that

he would not sell it at the price. He did not offer me the picture; the offer was made by me and declined by him.

Here is a second letter I wish to submit to you. It is addressed to the manager of a well-known firm by Sir William Eden himself:

DEAR SIR—I will send Mr. Swan's picture of my little girl to your gallery on Saturday next. [Mr. Swan is a well-known painter who had painted portraits of Lady Eden and of Sir William Eden's little daughter.]

I am very anxious for you to see it. It is, as you may suppose, an exceedingly clever work, but as a portrait it does not satisfy me. Perhaps you will undertake therefore to dispose of it for me, or even take it off my hands.—Yours truly, WILLIAM EDEN.

To this letter a reply was sent, declining the offer. Sir William, however, would not consider himself as beaten; and accordingly applied to another firm of picture dealers, and I will read you the manager's letter, which I have communicated to my opponent:

DEAR SIR—About three years ago Sir William Eden's picture of a little girl, by Mr. Swan, was on sale here.—Yours &c.

I have no wish to press too hardly on Sir William Eden, and the only argument I base upon these documents is the following: Sir William can scarcely urge upon the Court his scruples at leaving even some slight and fugitive trace of what was once Lady Eden's portrait in Mr. Whistler's hands. If, indeed, as he states, he recognised the colour of Lady Eden's

"Sir William Eden ne pourra pas invoquer devant la Cour le scrupule particulier qu'il aurait à laisser entre les mains de M. Whistler une trace même fugitive et légère de ce qui a été autrefois la portrait de Lady Eden. Si comme il le dit dans ses conclusions, il a reconnu la couleur de la robe de Lady Eden, la couleur de cette robe adaptée au corps d'une autre personne ne peut offenser la délicatesse de Sir William ètant donné les documents que j'ai eu l'honneur de mettre sous vos yeux.

dress, it is difficult to believe that his delicacy would be offended by this colour, adapted to the person of another sitter, when we consider the evidence I have just laid before you.

To pass on to the question of damages, gentlemen, you can judge of the value of the work by the fact that a higher price has been placed on it than that asked by Mr. Whistler. You will recognise the impropriety of handing over to Sir William Eden a work of art by Mr. Whistler, which would at once pass into some London or Paris auction-room, with all the prestige of notoriety and advertisement, including, no doubt, quotations from the judgment of this Court, which, I venture to think, will not be quite what Sir William Eden hopes.

MAÎTRE BUREAU'S SPEECH.

Gentlemen, the cause Mr. Whistler has brought before you does not turn on a quarrel with Sir William Eden. Mr. Whistler's counsel has been careful to assure us that money is no object here; the matter Mr. Whistler wishes to have decided, the insult he desires to avenge, is the offence committed against Art, as represented by himself.

For my part, gentlemen, I can claim no such lofty mission. I have simply to ask for your decision in the matter of an unimportant little case already pronounced upon by the Sixth Chamber of the Court. Was Mr. Whistler commissioned to paint Lady Eden's portrait? Before beginning, did he agree to a certain price? Did he, when the portrait was finished, or very nearly finished, take the money for it? Did he exhibit the portrait at the Salon of the Champ de Mars, under Lady Eden's initials? When the exhibition closed, did he refuse to give up the picture to the person who had ordered it; and, during the course of the lawsuit that ensued, did he mutilate the portrait by painting out the head? These facts,

gentlemen, I hope to establish to your satisfaction, and when I have done so, I have no doubt that you will feel justified in affirming the decision of the lower Court.

We will take the commission for the portrait first. It is perfectly correct that Sir William Eden first thought of asking Mr. Whistler to paint Lady Eden's portrait in 1892. Certain letters have been read in this connection, which passed between Sir William Eden and Mr. Thomson. Mr. Thomson acted as intermediary between Sir William and Mr. Whistler; he asked the artist if he would paint Lady Eden's portrait, and what his charge would be. Mr. Whistler, as you know, said £500. You know, too, that Sir William Eden rejoined: "No; the price is too high. I have already had my wife painted this year by Mr. Swan, and I can't afford such a large sum for the same thing again. Kindly give me Mr. Whistler's address, and if I have an opportunity of meeting him later on, we shall perhaps be able to come to terms."

It was not, in fact, till eighteen months later, at the end of 1893, that Mr. Whistler and Sir William Eden were brought together by their common friend, Mr. George Moore.

A letter, as you know, gentlemen, was written on January 6, 1894, which will show what terms had

"I undertook a journey to Paris in the depth of winter, had two shocking passages across the Channel, and spent £25. All this worry is the commission I receive for my trouble in the matter!"—*Mr. Moore's "account," Daily Chronicle, March* 29, 1895.

REFLECTION: Why! damme sir! he must have had a valentine himself —the sea-saddened expert.

been agreed upon between the artist and the amateur.

Arrangements were made for the sittings. Lady Eden came to Mr. Whistler's studio, and sat several times; the picture was almost finished on February 14, 1894. This date, as you have been told, is the Feast of St. Valentine, a day on which it is customary to exchange little presents in England. On February 14, accordingly, Sir William Eden handed Mr. Whistler a cheque in an envelope, with the following letter:

4, Rue de Presbourg, Paris,
February 14, 1894.

Dear Mr. Whistler—Herewith your valentine—cheque value one hundred guineas. The picture will always be of inestimable value to me, and will be handed down as an heirloom as long as heirlooms last!

I shall always look with pleasure to the painting of it—and, with thanks, remain

Yours sincerely,
William Eden.

On the same day Mr. Whistler acknowledged the receipt of the valentine in the following terms:

110, Rue du Bac, Paris,
February 14.

My dear Sir William—I have your valentine. You really are magnificent!—and have scored all round.

I can only hope that the little picture will prove even slightly

worthy of all of us, and I rely upon Lady Eden's amiable promise to let me add the last touches we know of. She has been so courageous and kind all along in doing her part.

With best wishes again for your journey,

Very faithfully,

J. McNeill Whistler.

We are told that this letter was purely ironical—"You are really magnificent!" &c.—and, further, that Mr. Whistler's irony is not to be translated into our language. The translation I used at the first trial is said to have been very inaccurate; but it is admitted that, if the terms of the translation were not quite exact, it nevertheless conveyed Mr. Whistler's idea and intention. I much regret, however, that this letter was not translated by M. Stéphane Mallarmé, like the other. What would have been the meaning of an ironical letter on this occasion? Can we really accept this explanation? There is, no doubt, a satirical touch in the phrase, "You are really magnificent!" but the rest of the letter is perfectly friendly, and promises the completion of the work, saying that only a few finishing touches remain to be added, and going on to pay a tribute to the kindness and patience displayed by Lady Eden. The terms of the signature, too, are cordial.

The next day there was a discussion between the artist and Sir William Eden. Two accounts of the

interview have been drawn up. The first is contained in my learned friend's speech, which has been printed. He has been good enough to send me a copy. But we have another valuable document, with which to compare the account given to the judges in the first trial. This is an "interview," signed by Mr. Whistler himself after the trial. There is, as you will see, gentlemen, some discrepancy in the texts. This is the version given by my learned friend:

"The artist received his noble client at the door of the studio, and did not ask him to come in. The following dialogue took place between them: 'I have received a letter from you that I do not understand, a very rude letter.'—'Impossible, I never write such things.'—'Well, but what do you mean by "I have received your valentine"?'—'You send me a valentine, I acknowledge it politely.'—'But you say: "You are really magnificent"?'—'Do you mean to say you are not?'—'I consider your letter insulting!' Hereupon Sir William Eden began to argue about the maximum and the minimum—the 100 or 150 guineas agreed upon, and ended by saying that a man would be a fool to pay more for a thing when he could get it for less."

You see, gentlemen, in what a ridiculous light Sir William Eden would appear if he had really said this. This is the version given at the first trial.

Let us now take Mr. Whistler's own version. After the first trial Mr. Whistler was interviewed, as I have already mentioned. His modesty is not alarmed by the interviewer. The result was a long and very well written article in the *Figaro*. I will spare you the introductory portrait of Mr. Whistler, gentlemen.

"I saw Mr. Whistler yesterday, and he gave me a detailed account of this strange and comic story, from which a certain amount of ridicule cannot fail to attach to some one or the other, I will not say who. . . ."

Then follows the tale you have already heard. Mr. Whistler goes on to explain that, once at work upon the portrait, he carried it a good deal farther than he at first intended, the first idea having been that he should only make a sketch. Listen to this: "I was carried away by my picture; this is not unusual with artists, you know." The Court was told that Sir William Eden haggled about the price. In the newspaper, on the contrary, we have Mr. Whistler's testimony that Sir William behaved like an honourable man. He had received an equivocal letter, and he asked for an explanation. When he perceived that the painter's irritation was probably caused by dissatisfaction with the price, how did he act? "Give me back my cheque, and

I will send you one for 150 guineas." You know with what brutality—or humour, as we are told it was—Mr. Whistler replied.

Tardy generosity, in flagrant form of hasty hush money! —*tout bonnement!* A grotesque spectacle of panic-stricken gentility, never to be forgotten. *See "Encountered."*

However this may be, one thing is clearly established. In spite of the declarations made in the first trial, some doubt might have been felt, after reading Mr. Whistler's letter and the interview, as to whether he actually took the money. He had the audacity to state, in a letter to the newspapers, that he had never used the cheque.* Now the truth is this. The cheque was given him on February 14, 1894. It was cashed the next day. The sum in question was never returned, and never offered to my client. My learned friend affirms that the money was placed at our disposal. I am not insisting on a legal offer; Mr. Whistler cannot be expected to understand the intricacies of the law. But, as a fact, Mr. Whistler made no attempt to repay the 100 guineas.* It is true that Mr. Whistler finally instructed his London solicitor to offer us the money. But when? On November 9, 1894.

The audacity is yours, Maître! —mes compliments!

* *See letter in reply to Q.C., page 22.*

Draft £105 sent to Paris Feb. 20, 1895 —mislaid—found among documents, like the Talent in its napkin, after trial. —So does the course of true law never run smooth, and eternal blunder waits upon success! That the gods may temper, to the one they love, intoxicating triumph with refining disappointment.

* *See "Fog" "A Ray."*

39 New Broad St, London, E.C. 11 Oct. 1898.

DEAR SIR,

We are glad to receive the original draft dated 20th Feb. 1895 found in the Dossier papers you have just received from your advocate in the Cour d'Appel. This is the draft which we on that day obtained from the London & Westminster Bank, Ltd., who drew on their agents, Messrs. Mallet Frères & Cie of Paris, for £105 that we might send it to your Paris advocate. We transmitted it according to your instructions in a letter dated the 20th Feb. 1895 with directions as follows:

"Mr. Beurdeley has asked us to forward you £105, being the amount which Mr. Whistler paid to us on the 9th Nov. last, and which we then offered to Sir W. Eden's solicitors, and which we subsequently sent them on the 14th Nov., and they returned to us on the 15th Nov. Mr. Beurdeley has copies of all the letters that show this. We have sent him the original letters from Messrs. Watkins Baylis the solicitors of Sir W. Eden.

"When your Counsel stated the draft was not to be found, it was all the while among the papers, but, in its transit from Court to Court, had evidently been overlooked.

"On 5th Feb. 1898 we obtained from the London & Westminster Bank the cash for the draft upon giving them an indemnity in respect of its loss, and remitted this amount for the payment in the suit.

"Yours very faithfully, GEO. & WM. WEBB.

"J. McNeil Whistler, Esq., 8 Fitzroy St., Fitzroy Square."

Maître Beurdeley: The day after the summons had been served.

Maître Bureau: Ten months after the payment.

What happened after this scene of February 14? Mr. Whistler had expressed a wish to add a few

finishing touches to the portrait. He did not consider it finished. Accordingly, on March 30, 1894, Lady Eden wrote to the artist in the following terms:

"DEAR MR. WHISTLER,

"When shall I come for my last sitting? Any day after Monday will suit me. You see I have changed my address."

Were these the relations of people who had quarrelled?

MAÎTRE BEURDELEY: You have no answer to that letter, have you?

MAÎTRE BUREAU: No. Lady Eden went to the studio; the last sitting was given. . . .

MAÎTRE BEURDELEY: No.

MAÎTRE BUREAU: Do you dispute this statement, then? The picture was sent by Mr. Whistler to the Salon of the Champ de Mars, and exhibited under No. 1187 as: "Brown and Gold. Portrait of Lady E." It was exhibited together with impressions of the same kind, called respectively, "Violet and Silver," "Dark Blue and Silver," "Blue and Violet."

We have said that the portrait was exhibited with our consent—Mr. Whistler will deny it—but at least with our tacit consent.

I fancy Mr. Whistler, who is so well armed with legal theories, will hardly have the audacity to main-

tain that an artist, having painted a woman's portrait, has a right to exhibit it without her consent and that of her husband. At any rate, gentlemen, this fact is clearly established. Mr. Whistler exhibited the picture. The Salon was closed. And on October 10, 1894, a letter was written requesting Mr. Whistler to send home the picture. No answer was received. A second letter was written. Again there was no answer. Then Sir William Eden, who was in London, went to his solicitor and explained the matter. "I paid for the portrait; it has been finished and exhibited, and I can't get it sent home."

Before taking proceedings, the solicitor wrote to Mr. Whistler, in perfectly courteous terms.

There was no answer. The London solicitor then wrote to his agents in Paris, Messrs. Sewell and Vaughan, who sent a very polite letter to Mr. Whistler. They were convinced there had been some misunderstanding.

Still no answer. Or rather, there was an answer of a sort. Receiving no letter, Messrs. Sewell and Vaughan sent a clerk, whom Mr. Whistler turned out of doors cavalierly enough. The suit was then instituted.

My learned friend makes it a reproach to Sir William Eden that he has constantly changed his attitude in the course of this suit. We shall show

who is responsible for the different phases of the case.

It began with an application from us for the delivery of the portrait, for at first we were ignorant of what Mr. Whistler has gradually revealed to us. It was objected that this was an exceptional case. Mr. Whistler, who is nothing if not ingenious, asked us for a guarantee *judicatum solvi*. He had forgotten that he is a foreigner. He did not, however, insist on this point.

The day before the hearing we received a very unexpected notice from Mr. Whistler, to the effect that he had painted out Lady Eden's head, and intended to substitute the head of another person; and further, that he meant to retain the general arrangement of the picture.

I must ask the Court to bear in mind this first affirmation of Mr. Whistler's on February 25, 1895, the day before the hearing, to the effect that the only modification he had made in the portrait was the painting out of the head. Then we are told that Mr. Whistler is a distinguished painter; that Sir William Eden's behaviour to him was altogether extraordinary, and that on this account he refused the portrait.

Confronted with this new situation, with this mutilation of the portrait, of which we had known

nothing before, we were necessarily obliged to modify our attitude. We only demanded the delivery of the portrait because we believed it to exist in the final form given it by the artist, who himself described it as "a little masterpiece." We put forward a new plea, asking for damages. We said that as our property had been tampered with, we demanded compensation.

But, gentlemen, Mr. Whistler had other surprises in store for us. The case came on on February 27. The Court ordered the portrait to be produced in the Chambre du Conseil, and the parties to appear. Then what did we find? Not only that the face or the head had been painted out, but that another person's head had been substituted for that of Lady Eden. It will be interesting to remember that Sir William and Lady Eden had no difficulty in declaring the picture they saw to be the quondam portrait of Lady Eden. One thing only had been modified, and that was the head. There was the same sofa, there were the same accessories. To these a pot of flowers had been added in the shade to the right. But—and this is another essential point—the dress and the various accessories of the costume had not been touched. All that had been changed, therefore, was the head.

Clearly, gentlemen, we were obliged to change our

ground, in face of these new revelations. It cannot be made a reproach to us that we did so.

We then returned to Court, when another incident occurred to which I must draw your attention. The picture was brought with a glass over it. The President, to whom I had pointed out the freshness of the paint on the face, begged Mr. Whistler to remove the glass. He replied that this would be very difficult. It proved perfectly easy. Two nails were pulled out and the glass was removed. The President then asked Mr. Whistler to rub his handkerchief over the picture, saying, "You declare the picture to be an old one; you say the alteration of the face was not done recently. This is asserted in your last pleadings. There can be no harm, therefore, in doing as I wish."

Mr. Whistler accordingly rubbed very hard all over the picture, except on the face. The alteration, gentlemen, had been made just before the picture was brought into the Chambre du Conseil.

MAÎTRE BEURDELEY: You did not call my attention to this in the Chambre du Conseil.

THE PRESIDENT: We really cannot go into what happened in the Chambre du Conseil.

MAÎTRE BUREAU: But my learned friend says I did not call his attention to this.

THE PRESIDENT: Continue your speech, if you please, Maître.

MAÎTRE BUREAU : Certainly, especially as the newspaper I have in my portfolio will answer this charge. When we returned to the Court, I took care to ask for a public statement of what had occurred in the Chambre du Conseil.

These, gentlemen, are the facts upon which the judgment now submitted to you was given.

Have our opponents introduced any new elements into the case? Not any. A letter from Goupil's Manager has been put in, which shows that about three years ago Sir William Eden wanted to sell a portrait of his little girl. The letter states the reason. The portrait was not a satisfactory likeness. What bearing can this incident possibly be made to have on the present suit?

The Manager further affirms that after judgment had been given for him, Sir William Eden went to the Goupil Gallery in London, and that a conversation took place between himself and Sir William on the subject of the lawsuit, in the course of which Goupils offered to buy the picture for £200. The Manager adds that he increased the sum to £250, and, indeed, he could well afford to increase his terms. And why? Sir William Eden had no idea of selling the picture, and of course refused the offer. It was not that he thought the sum mentioned fell short of the value of the picture. It was that he

would not allow what had been *his wife's portrait*, the picture to which public attention had been drawn in so many articles and interviews, to become a medium for the advertisement for which Mr. Whistler is so eager. This is why Sir William Eden would not part with the portrait.

Ingenious!—see the Baronet's letter to the firm, p. 40.

Besides, notice of appeal had been given. What would have been Sir William Eden's position had he made a bargain with the Goupils? This, however, may be put aside. What we have to deal with is the eternal question on which the lower Court gave judgment. Was the commission accepted, and was it executed? In this connection I have to answer my learned friend, who maintains that you cannot adjudge the picture to Sir William Eden, because it is an imperfect and incomplete creation of the artist's brain. But, gentlemen, we need not ask what the portrait is now. What we must ask is, was the picture completed at a given moment? Certainly it was, as we know from Mr. Whistler himself. It was finished so much to its author's satisfaction that he did not hesitate to describe it to interviewers as "a masterpiece."

I admit that a painter who has accepted a commission cannot be required to deliver a work with which he is dissatisfied. But in the present case he was completely satisfied. We may take it as clearly

proved that the picture was finished, and brought to such a state of perfection that it was actually exhibited under the initials of my client. It follows, gentlemen, that the work must be handed over to us, being, as it is, our property.

We must now consider for a moment the ingenious intervention of Mrs. Hale in the first suit. She does not figure in the appeal, but we are told that the repainted head in the picture is a preliminary sketch for a portrait of Mrs. Hale.

Now, if the picture was Sir William Eden's property, what are the consequences? Mr. Whistler has wholly or partially destroyed the work; it does not much matter which. He certainly destroyed it partially, as we know from the statements made in the judgment, statements made by the judge himself in the Chambre du Conseil. But, on the other hand, it is still the same picture, the very same object, and has never ceased to be the property of Sir William Eden.

Under these circumstances, let us now consider the damages we may claim for the mutilations inflicted on the portrait.

Of what have we been deprived? Of a picture which, before you mutilated it, was a portrait of Lady Eden. What remains to us? The wreck of Lady Eden's portrait This is the injury of which we complain.

One of your chief grievances against the first judgment is that it really went too far when it ordered the handing over of the portrait, the repayment of the money, and further, 1000 francs damages. My learned friend is not quite candid as to the terms of the judgment. Accepting the fact that the picture belongs to Sir William Eden—a fact which I think admits of no discussion—the judges ordered it to be given up to the owner. This was the logical consequence of the statement the judges had made, and were, indeed, obliged to make.

"Whereas, on the first count, Whistler is ordered to restore the 100 guineas by way of damages."

On the second count they proceeded to award us another 1000 francs damages, in all 3625 francs. It is, therefore, a mere quibble to say that Mr. Whistler was condemned to return the price of the picture and the picture as well, and in addition to pay damages. What the judges really ordered was the handing over of the picture, and the payment of damages to the amount of 3625 francs, reducible, as I have shown above, to two elements.

But, gentlemen, as I have said before, it is not the money question by which Mr. Whistler is so much moved.

Mr. Whistler's real object is notoriety. What he wants is to have his name brought prominently before

the public; to see it in print; to call attention to himself and his works. In a letter which has been read you he tells us plainly what his object was, why he raised the question, why, though he had no intention of giving up the picture, he nevertheless retained the cheque. "It was to make Sir William Eden come and claim it here before all Paris!" This was what Mr. Whistler wished to bring about.

Mr. Whistler can have no illusions as to the legal aspect of the case. He is too intelligent and too well informed for that. But he wishes all the Press to ring with this affair.

This is not the first time, gentlemen, that Mr. Whistler and his works have appeared in Court. Some years ago Mr. Whistler exhibited a picture of "A Thames Fog." Mr. Ruskin had the bad taste to say that, on this occasion, Mr. Whistler, whose talent he fully recognised, (!) was laughing at the public. Mr. Whistler brought an action against Mr. Ruskin. The judge ordered the picture to be produced. It was submitted to an expert, and the judge asked what he thought of it. The expert turned the picture over, and asked the name. "A Thames Fog." "The fog is very well done," he said, "for I really can't see anything." Mr. Whistler lost his case.

Shocking bad raconteur, Sir William!—and his steamer-tossed familiar clearly no better!

But Mr. Whistler is capable of arraigning Nature herself, and might have done so, had she not shown

signs of grace. Sometimes Mr. Whistler perceives that Nature is not quite as he represents her, and he is displeased. But one day Nature repented. Someone pointed out a landscape very like those he is in the habit of painting to Mr. Whistler. "Yes," he observed, "Nature is really creeping up!" In consideration of this progress, no doubt, Mr. Whistler has let her off.

We know the delightful story!—And the Baronet's marked disapproval, through his lawyer, of such unscrupulous attitude toward Nature herself, as is therein laid bare, was a triumph of astute respectability!—only lost in an odd sense of drollery that had filtered into Court.

Such, gentlemen, is the appellant in this case. You have heard his defence, and the extenuating circumstances—for as such I suppose we must accept the points insisted on by my learned friend—which have been urged on his behalf. You are to decide a case as to the legal aspect of which there can be no manner of doubt, and I am convinced that you will confirm the judgment against which the appeal has been made.

CONCLUSIONS OF THE AVOCAT-GÉNERAL DE LA RÉPUBLIQUE, WATCHING THE CASE ON BEHALF OF THE GOVERNMENT

MESSIEURS,

Before passing the main facts of the case in rapid review, I crave the indulgence of the Court to let me say a few words about Mr. Whistler himself, which may facilitate your examination of the question submitted to you, and help you to a conclusion on the points at issue.

According to his admirers, and they are many, Mr. Whistler enjoys a great reputation in London. A critic, who is a warm admirer of Mr. Whistler and his works, seeking to give some idea of Mr. Whistler's fame in England, makes the following curious statement in a work I shall have occasion to quote again: "A letter addressed 'James Whistler, London,' would reach its destination safely and rapidly through the noisy labyrinth of chaos and mystery that makes up the vast city."

Yet Mr. Whistler, now so widely known in London, was not always the object of universal admira-

tion on the other side of the Channel, and there was a time, too, when his works were hardly understood in France. He made his *début* among us in 1863, when he sent a picture he called "The White Girl" to the Salon. This picture was rejected by the jury, and Mr. Whistler sent it to the Salon des Refusés, where it found a place among the works of men now universally acknowledged as masters—Manet, Degas, Cazin, and others. Mr. Whistler long bore our Salon a grudge on this account, and he punished it by an abstention of nineteen years. In 1882 he made his triumphant entry into the Salon with another portrait, and in 1883 he exhibited the portrait of his mother, to-day in the museum of the Luxembourg.

But I will not further pursue this, gentlemen. I should be sorry to make a vain display before the Court of artistic erudition, the more so as all this has no direct bearing on the facts of the case. I only wish to show you that Mr. Whistler, who had once to combat the jury of the Salon, and who had, it seems, good reason to complain of his treatment here, now enjoys a reputation at least as great in France as in England. He is an officer of the Legion of Honour; his portrait of his mother, the portrait which signalised his return to the Salon in 1883, has been in our national collection two or three years.

He is now a man widely known, and very honourably known, among us.

So far, gentlemen, I have spoken only of Mr. Whistler's portraits, and I shall have little occasion to mention his other works. But he is not only a painter of figures and portraits. He paints landscapes too, and these landscapes he calls " Harmonies and Symphonies."

I have told you, gentlemen, that French picture-lovers recognised the mistake made in 1863, that the jury of the Salon recognised it, that the State itself atoned by covering Mr. Whistler with honours, and throwing open the doors of our national museum to him. It would even seem as if Nature herself, following in the train of the State, were anxious to to give a flattering reception, in France, to Mr. Whistler!—and this with a coqueterie that would coincide with the discussions of this case! For, during the last few days we seem to have been living in paintings by Whistler, and I myself, on my way to this Court, have perceived with wonder, unfolded in the mist vaguely recalling the fogs of the Thames, his " Symphonies in pale gold and blue " all around us!

Such, then, is Mr. Whistler, and as such it was necessary that you should know him. I will add but one touch to the portrait. Mr. Whistler, who has

now achieved in no uncertain fashion a universal reputation, is lucky enough to have a few remaining enemies. There are critics who misunderstand him, certain amateurs who execrate him, and the general public who throng to our annual exhibitions do not always appreciate him. He is fortunate enough to be much discussed; but if some are indifferent or hostile, these are balanced by others who are enthusiastic in their admiration. Then, gentlemen, like all persons who hold a prominent position, he finds, following in the train of the critics and enlightened amateurs whose artistic opinion is founded on special knowledge, a host of those whom the English call "snobs," persons who are admirers or detractors according to their temperament, the fashion of the day, the whim of the moment; and, in addition to all these predetermined admirers or detractors, the eclectics, those who delight in a fine picture, no matter who painted it, who, unbiased by any personal feeling, and with no special taste for fogs and mists, will always admire a fine Whistler as heartily as they admire a landscape by Français or Harpignies. These are the wise men who feast their eyes on a beautiful work of art, whatever its origin, and who would scorn to be governed by the admirations or the detractions of convention.

I have already said, gentlemen, and I repeat it, that

this rapid sketch is not without value, though it may seem to lie somewhat outside the main issue. It will serve, if not to decide the point of law submitted to you, at least to make Mr. Whistler's attitude comprehensible, and I will even go further, and say, to justify it completely. Let us now inquire what that attitude is.

To begin, then, the artist, as you know, does not dispute the fact that he agreed to paint a portrait of Lady Eden, at a price ranging from £100 to £150, or 100 guineas to 150 guineas, a sum fixed (if we can call any sum fixed which fluctuated, so to speak, between £100 and £150) by a common friend of Mr. Whistler and Sir William Eden. Nor does he deny that, *pro formâ* at any rate, he accepted the cheque for £100 presented to him on Valentine's Day by Sir William Eden with a courtesy marred, if I may be allowed to say so, by a considerable tincture of calculation and parsimony! He admits that after the receipt of the valentine he added those final touches to which he alludes in his ironical letter of acknowledgment, and he further admits having exhibited the portrait in 1894. . . .

"M. Whistler ne discute pas davantage qu'il a, au moins dans la forme, accepté le chèque de 100 livres, qu'au jour de la St. Valentin, Sir William Eden lui a remis avec une gracieuseté qui, passez-moi l'expression, me paraît bien être quelque peu mâtinée de calcul et de parcimonie!"

I will now, with your permission, read you a passage or two from the critical work already alluded to, and this will be my last word on the talent of Mr. Whistler, or, rather, his genius. It will determine

for you clearly Mr. Whistler himself, and will enable you to understand his attitude. The first relates to the picture exhibited as "Brown and Gold"—the picture which is the object of the present litigation.

"'Brown and Gold.' A lady seated on a sofa. A marvel of arrangement and gradation (tone?)."

The critic then devotes two pages to Mr. Whistler's portrait of M. de M——. I will read a few lines from this:

"Whistler is the portraitist of this subtle personality, and never was there a more intimate harmony between sitter and painter. The artist of nocturnes and harmonies, the creator of the exquisitely reticent in portraiture, the wizard of feminine apparitions and of intellectual expression, must have felt the dandyism of M. de M—— a strong attraction to the fund of dandyism underlying his own character. He was in sympathy with both the natural and artificial in this personality, this being who could only have blossomed in an advanced civilisation."

This, gentlemen, is how a brilliant critic expresses himself as to Mr. Whistler's admirable comprehension of his model. The passages I have read will enable you to appreciate the man whose actions you must understand before you pronounce upon them from a legal standpoint. You must allow me to add on my

own account a word to the critic's remarks. M. de M——'s portrait was certainly a most remarkable work, whatever may be the opinion held on Mr. Whistler's artistic tendencies.

Now, gentlemen, Mr. Whistler, admitting all the facts I have gone over—the business proposal, the promise, the receipt of money, the exhibition of the portrait at the Salon du Champ de Mars in 1894—also admits that, at the close of this same year (1894), when Sir William Eden demanded the portrait, he refused to give it up, and that when the law was put in motion to make him "execute" himself, he elected rather to "execute" the portrait by wiping it out.

This, gentlemen, was a cool and deliberate act of will on Mr. Whistler's part—an act which will explain why I have thought it necessary to speak somewhat at length about the artist. It was a logical action coming from him—for he is Mr. Whistler. And Mr. Whistler is not alone. He represents "Whistlerism and the Whistlerians." This phrase is not my own. I quote again from the critic I have already cited. He owed it to himself, to Whistlerism, and to all Whistlerians, *not to allow himself to be tricked* by Sir William Eden! and that was why he refused to give up the portrait. But, on the other hand—and I cannot impress this upon you too strongly, in view of the legal question

"Il se devait à lui-même, il devait aux Whistlériens et au Whistlérisme de *ne pas se laisser jouer* par Sir William Eden."

I now approach—from the first he offered to return the £100. He fully recognises this obligation; he even, as you will remember, bows to the decision of the Court, which condemned him in damages to the extent of £40.

What he revolts against in the name of personal freedom—of the freedom of all artists—of the independence and the sovereignty of art—is the judgment which condemns him to deliver the picture in its present state.

Was the Court justified in ordering him to give up the picture, or is Mr. Whistler justified in refusing so to do? This, gentlemen, is the sole question that has been brought before you.

"Le Tribunal a-t-il eu raison d'ordonner la livraison du tableau, ou M. Whistler a-t-il raison de le refuser? C'est, Messieurs, la seule question qui ait été débattue devant vous; c'est pour obtenir la solution de cette unique question que l'appel a été interjeté? Malgré la forme nécessairement générale de cet appel vous savez que c'est la seule question dont se soit préoccupé l'avocat de M. Whistler. Je n'hésite pas à penser—je le dis tout de suite—que le Tribunal s'est trompé"

The solution of this question is the sole object of the appeal. Notwithstanding the necessarily general form of the appeal, you know that that is the only question with which Mr. Whistler's lawyer was concerned. I have no hesitation in believing—and I say so at once—that the Court was mistaken. The cause of its error of judgment was another error, upon which I will now enable you to put your finger. The Court seems to have thought that the original contract, an unnamed contract, a mixed contract, an obligation to *execute* in any case, became, at a given moment, so entangled as to constitute a contract of *sale*, and it was by applying the law of

sale to the relations of the contracting parties that it arrived at formulating its conclusions. This, gentlemen, I must point out to you clearly, and I must therefore read you three pages from the report of the judgment delivered by the lower Court.

"Whereas, say the first Judges, in the first place, it is proved that, thanks to the intervention of mutual friends, Eden wished to have a portrait of Lady Eden by Whistler, and Whistler consented to paint that portrait.

"Whereas, through the medium of the same persons, the price of Mr. Whistler's work was fixed at between 100 and 150 guineas.

"Whereas, therefore, the agreement having been arrived at as to the thing and as to the price, Whistler had contracted the obligation of painting the portrait and Eden the obligation of paying the price of it. . . ."

This, gentlemen, is indeed the contract which comes into existence between the painter and the intending purchaser such as jurisprudence has always recognised and described it, as you will see presently from the single example which I will quote to you.

"Whereas, Whistler fulfilled his obligation and painted the portrait of Lady Eden.

"Whereas, on his part, on the 14th February,

1894, Eden sent Whistler a cheque for £105 sterling, representing 2625 francs.

"Whereas Whistler received the cheque and replied to Eden in a letter, the first part of which, alluding to the price sent, and indeed kept, no doubt expresses a little irony, but the second part shows clearly that the artist, leaving aside the question of money, pleased with his work, expresses the desire 'that this little painting may be worthy of us all,' as he says, relies upon the kind promise of Lady Eden to permit him to add the few little touches which we know of, compliments his model 'on her courage and her kindness,' and ends with his best wishes to Eden.

"Whereas, after this date of the 14th February, 1894, the relations between Eden and Whistler continued to be courteous.

"Whereas the latter entirely finished his work, and, with, at any rate, the tacit consent of Eden, he exhibited it at the Salon in the Champ de Mars, with his other works, under the No. 1187 and under the title 'Brown and Gold. Portrait of Lady E. . . .'

"Whereas the fact that Eden chose, as regards price, to pay the minimum price fixed, could not change the nature of the contract entered into between Whistler and him.

"Whereas Whistler was under the strict obliga-

tion of painting and delivering the portrait, and if he considered that the price paid him by Eden was insufficient, he could, either by amicable means or by legal proceedings, claim that this price should be fixed at a sum more nearly approaching to the maximum; but Whistler never made such a claim."

So far, gentlemen, the arguments put forward are perfectly sound. The Court recognises the contract to execute, and the exceptional character of such contracts between artist and amateur, as by law established. But we now come to the two counts on which the Court went astray, and was seduced into the judgment I criticise:

"Whereas Whistler accepted the cheque, and that this fact establishes his formal consent to the price;

"Whereas from this moment the portrait painted by Whistler and paid for by Eden became the exclusive property of the latter in part and in whole."

According to the ruling of the Court then, the whole nature of the original contract was changed directly the cheque was accepted; and from February 14 the obligation to execute was superseded by an obligation to sell, a contract in which, the thing and the price being agreed upon, and the price paid, the person who ordered and paid for the thing became its owner in part and in whole, and from this moment, according to the judgment, the painter lost the right of refusal to

carry out his agreement, and, in the event of refusal, made himself liable for damages.

The right of refusal to deliver has always been recognised in jurisprudence. I could quote many precedents, gentlemen, but will restrict myself to one which sums up the respective positions of contracting parties in such cases in a few lines. It is the judgment of the First Chamber of the Court of Appeal in Paris on July 4, 1865, in a suit between Rosa Bonheur and a client who had given her a commission for some pictures she refused to deliver. I will read the two clauses which define the nature of the contract, and the respective rights of painter and client :

"Seeing that non-execution of an obligation to execute resolves itself into a question of damages, and that there are no grounds for fixing a certain period for the execution of the contract, with a pecuniary penalty for every day's delay, unless the seller himself agree to such terms;

"And seeing the special nature of the contract, and the formal refusal of Rosa Bonheur to fulfil her obligation, we have only to pronounce upon the question of damages."

The lower Court was acquainted with this judgment and with the principle of jurisprudence involved, but it evaded the difficulty by supposing the contract to

have been superseded by an actual sale, and by declaring that on February 14, 1894, the day Sir William Eden pronounced himself satisfied with the work, and paid Whistler a hundred guineas, he became the owner of the picture.

What would be the result of the confirmation of such a theory by you, gentlemen? An amateur, we will say, makes a bargain with a painter, and orders a picture. After a time, the amateur, who knows but little about it, is satisfied with the picture, perhaps as yet a mere sketch. He is in a hurry to get possession of it. He offers the price of it to the painter, who accepts it, thankful to be paid in advance (knowing, as he does, that sometimes artists are never paid at all). Under such conditions, amateurs, those whom artists irreverently call bourgeois or "Philistines," would become the sole judges of the degree of perfection of a work of art, of its completion or non-completion, and the painter would have no voice in the matter. An imprudent or needy artist, who had taken his money before finishing his picture, would be forced to hand over an imperfect work, a work injurious to his present reputation, and still more injurious to his future fame, because the purchaser who had paid would be the recognised owner of the work in part and in whole. In a word, the right of an artist not to deliver a work with which he is

himself dissatisfied would be blotted out from the records of custom and of jurisprudence.

The Court was, I think, misled by a special circumstance connected with the suit. I refer to the avowed cause of Mr. Whistler's refusal, which he himself has never attempted to disavow. He refused because his self-respect had been wounded by Sir William Eden. He considered in execrable taste the methods of Sir William Eden, who sends him £100 when he might have sent him £150, when at least he might have consulted with him as to the sum between the £100 and the £150 he ought to send him.

"Il a trouvé de mauvais goût le procédé de Sir William Eden, qui lui envoie 100 livres, alors qu'il aurait pu lui en envoyer 150, alors qu'il aurait pu tout au moins discuter avec lui quel était le prix à lui donner entre 100 et 150 livres."

As to the picture itself, Mr. Whistler thought it excellent, and exhibited it publicly. The critic I have quoted pronounces it "a marvel of arrangement and tone." Mr. Whistler himself, in an interview published in the *Figaro*, speaks of it as "the little masterpiece." The term is perfectly correct.

Mr. Whistler's refusal, then, to hand over the picture is not due to any defect in the work itself, by which his reputation might suffer, but to the fact that he has a quarrel with Sir William—between man and man—*gentilhomme à gentilhomme*—gentleman and gentleman.

"Ce n'est donc point parce que l'œuvre est imparfaite, inachevée et de nature à porter atteinte à sa gloire que M. Whistler la refuse, mais c'est parce qu'il a eu une querelle d'homme à homme, de gentilhomme à gentilhomme, de gentleman à gentleman avec Sir William Eden."

"Le Tribunal a trouvé que c'était là une mauvaise raison. J'estime quant à moi que le Tribunal s'est trompé."

The Court thought this reason a bad one. As for myself, I feel that the Court herein made a mistake. The artist is not even called upon to give any reason

for refusing to fulfil his contract. He is within his rights if he refuses to carry out his undertaking, and elects to take his chance of having to pay damages. This right is absolute, and Mr. Whistler simply affirmed his right when he refused to give up the picture.

Now, messieurs, his opponent would force him to hand it over. This brings us back to my former contention. The painter would be forced to give up a work which is comparatively formless, at least in the principal part. I presume that Mr. Whistler, when he painted his harmony in brown and gold for a portrait, intended to reproduce the features of his sitter. But these no longer exist. The "harmony" still remains, and a white patch in its midst marks the place for the head, but Mr. Whistler has deliberately effaced the portrait. Mr. Whistler refuses to deliver it, though he accepts the penalty of his action. He is willing to pay damages with interest.

It remains only to fix the sum of this penalty. I think he will have made sufficient reparation if he returns the 100 guineas, with 5 per cent. interest from February 1894, and further pays into Court 1000 francs (£40) damages with interest. It will be unreasonable to object to this sum on the ground of its insignificance, unless Sir William Eden is prepared to say: "Thanks to the intervention of Mr. George

Moore, I got for 100 guineas a thing which was really worth 500. By Mr. Whistler's malice and caprice I am consequently deprived of a work worth currently 500 guineas. Well, then, *it is the double, the treble, the quadruple of what I paid that I ask you to accord me!*"

"On ne pourrait en critiquer le chiffre et l'importance que dans le cas où Sir Eden alléguerait ceci : 'J'avais eu, grâce à l'intervention de M. Moore, pour 100 livres ce qui en valait 500. Par conséquent, je suis privé, par la mauvaise volonté et par le caprice de M. Whistler, d'une œuvre qui vaut couramment 500 livres. Eh bien, *c'est le double, c'est le triple, c'est le quadruple de ce que j'ai payé que vous devez m'accorder!*"

"C'est bien, me semble-t-il, le calcul qu'avait fait M. Eden lorsque, en première instance, il demandait 10,000 frs. de dommages-intérêts pour la privation d'un portrait qu'il avait payé 2,500 frs. environ. Il n'a pas osé reproduire cette théorie devant la Cour—je le comprends à merveille!"

Some such argument seems to have been in Sir William Eden's mind when, before the first Court, he claimed 10,000 francs damages for the loss of a portrait which cost him about 2500. He has not ventured to put forth again such theory before this Court—and I understand him marvellously well!

To resume, then, gentlemen, I confirm the judgment of the lower Court as regards the allocation of damages and the refunding of the 100 guineas.

I reverse it as regards Mr. Whistler's obligation to give up the picture to Sir William Eden. Under these conditions, if the Court is with me, it will have to modify those resolutions which, in my opinion, are unacceptable.

JUDGMENT.

ARRÊT.

La Cour,

Entendu les avoués et avocats dans leurs conclusions et plaidoiries;

Entendu également M. l'Avocat Général;

Statuant sur l'appel interjeté par Whistler du jugement en date du 20 Mars, 1895, rendu par le Tribunal civil de la Seine,

Sur la matérialité des faits,

Adoptant les motifs des premiers juges;

Sur leur appréciation juridique,

Considérant que les faits rapportés par le jugement dont est appel ne constituaient qu'une simple obligation de faire se résolvant, en cas d'inexécution, en dommages et intérêts;

Considérant en outre que William Eden *n'est jamais à aucun moment devenu propriétaire du tableau représentant la figure de sa femme;* qu'il est seulement avéré que le peintre par caprice ou par amour propre s'est refusé à livrer à celui qui le lui avait commandé le portrait dont s'agit;

Considérant dès lors que Whistler, s'étant, comme il vient d'être dit, soustrait à ses engagements, doit restituer à Eden les 2625 francs qu'il avait consenti à recevoir pour rémunération de son travail avec les intérêts à 5 % du jour du versement, qu'il doit être en outre condamné à des dommages et intérêts dont le montant a été fixé par le jugement à la somme de mille francs;

Mais, considérant que les premiers juges ont à tort ordonné la remise aux mains de Eden du portrait *transformé malicieusement* par Whistler

THE COURT,

Having heard the counsels for plaintiff and defendant, and the summing-up of the Avocat-Général, and being called upon to pronounce judgment in the appeal made by the defendant, Whistler, against the decision of the Civil Tribunal of the Seine, given March 20, 1895

Inasmuch as the agreement described in the judgment against which the defendant appeals consisted merely of a contract to execute, making the defendant liable, in case of non-execution, for damages

And inasmuch as William Eden *was never, at any moment, the owner of the picture for which his wife sat*, and merely asserts that the painter, actuated by caprice or *amour propre*, refused to give up the portrait in question as required

Inasmuch as Whistler, having failed to keep his engagement, as above stated, has to return the 2625 francs (100 guineas) he accepted from Eden, with five per cent. interest thereupon from the day of

par le motif que le portrait était la propriété exclusive de Eden et qu'il devait lui être donné, qu'enfin l'engagement intervenu entre les parties n'a revêtu aucun des caractères de la vente, mais seulement ceux d'une obligation de faire, dont la conséquence qui en découlerait serait que le portrait dont il s'agit *n'a jamais cessé d'être la propriété de l'artiste, et ne saurait dès lors sortir de ses mains, malgré sa volonté;*

Mais considérant d'autre part que ce portrait aujourd'hui transformé dans sa matérialité n'en conserve pas moins l'harmonie générale que l'artiste avait donnée à sa composition, à l'aide de motifs à lui fournis par la dame Eden, que dans ces conditions, il est juste de décider que ce droit de propriété de l'artiste n'est pas un droit absolu, sans restriction et sans limite et de déclarer au contraire que tant que la transformation du petit tableau ne sera pas complète, et ne sera pas rendu livrable, Whistler ne pourra en faire aucun usage public, ni privé

payment; and inasmuch as he has further to pay damages to the amount of 1000 francs (£40);—

But inasmuch as the Judges of the lower Court wrongfully ordered that the portrait mischievously altered by Whistler should be handed over to Eden, on the grounds that the picture was the exclusive property of Eden, and ought to be given up to him; and inasmuch as the agreement between the parties *was in no sense a contract to sell*, but merely an *obligation to execute*, so that the portrait *has never ceased to be the artist's property, and cannot be taken from him without his consent*

Inasmuch, on the other hand, as this portrait, though altered in some essentials, still retains the general harmony given to his composition by the artist with the help of certain motives furnished by Lady Eden, and that, under these conditions, it seems evident that the artist's right to the picture is not absolute, without limitation or restriction, and that, on the contrary, so long as the transformation of the little picture is not complete, Whistler may not make any use of it, public or private

PAR CES MOTIFS

HEREBY

Confirme le jugement dont est appel en ce qu'il a rappelé très exactement les faits dans leur matérialité,

confirms the judgment against which appeal is made in so far as it set forth the material facts,

Le confirme également en ce qu'il a condamné l'appelant à restituer à William Eden les 2625 francs que celui-ci avait versés le 16 Février 1895, avec les intérêts à 5 % l'an, à partir de la dite époque, et à payer la somme de mille francs à titre de dommages et intérêts

And confirms it in ordering the appellant to refund

Dit au contraire qu'il a été mal jugé par le jugement dont est appel, en ce qu'il a décidé que William Eden était devenu propriétaire du por-

trait litigieux du moment où les parties étaint tombées d'accord sur le prix et sur la chose

Emendant, et réformant de ce chef, statuant à nouveau, dit, en droit, que l'engagement intervenu entre les parties étant une simple obligation de faire se résolvant, en cas d'inexécution, en dommages et intérêts, *laisse l'artiste maître et propriétaire de son œuvre, jusqu'au moment où il se décide à la livrer et à s'en désaisir*

Décharge en conséquence Whistler de la condamnation prononcée contre lui ordonnant la remise aux mains de William Eden du tableau dont s'agit, mais déclare que tant que sa transformation ne sera pas complète de façon à le rendre livrable, Whistler ne pourra en faire aucun usage public ou privé;

Condamne enfin Whistler aux dépens de première instance. Ceux d'appel restant à la charge de William Eden;

Ordonne néanmoins la restitution de l'amende consignée.

the 2625 francs (100 guineas) paid him by William Eden, with five per cent. interest thereon from February 14, 1894, and to pay 1000 francs (£40) damages, with interest

But rules that the judgment was at fault in declaring that William Eden became the owner of the picture as soon as the contracting parties had agreed as to the thing and the price

Amending this clause of the judgment, and pronouncing afresh, the Court declares the contract between the parties to have been merely an agreement to execute, resolving itself, in the event of non-execution, into a question of damages; it therefore *leaves the artist master and proprietor of his work till such time as it shall please him to deliver it, and give up the holding thereof*

It discharges Whistler from all obligation to give up the portrait to William Eden laid upon him by the lower Court, but declares, on the other hand, that so long as the work remains incomplete, and unfit to deliver, Whistler can make no sort of use of it, public or private.

It orders Whistler to pay the costs of the first suit, and William Eden to pay costs of appeal.

The fine to be refunded.

RÉSUMÉ

PRESTIGE OF THE WORK OF ART AND PRIVILEGE OF THE ARTIST—

Established: The ABSOLUTE RIGHT *of the Artist to control the destiny of his handiwork—and, at all times, and in all circumstances, to refuse its delivery into unseemly and ridiculous keeping—*

The DIVINE RIGHT *of the Artist to pay damages, and so rid himself cleanly of the carelessly incurred, and pertinaciously unbecoming company of this hereintofore completely discovered, penetrating—persevering—planning—devising—Valentine designing—pestilential, and entirely matagrabolising personage!—*

Who forthwith empouches the gainings—unthinkingly, unblushingly, inevitably!—and once more unwittingly and prodigiously justifies the judgment!—

L'ENVOI

". . . As a man wipeth a dish—wiping it and turning it upside down!"

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